

1943

China and the United States, 1922-1928 ;: how the administrative problems concerning tariff, extraterritoriality, and communications affected diplomatic relationship between China and the United States.

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# CHINA AND THE UNITED STATES, 1922 - 1928

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CHINA AND THE UNITED STATES,

1922 - 1928

How the Administrative Problems Concerning Tariff,  
Extraterritoriality, and Communications Affected  
Diplomatic Relationship Between China and the  
United States

By

Mary P. Farrell

Thesis submitted for the degree  
of Master of Science

Massachusetts State College

Amherst, Massachusetts

May, 1943

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## A C K N O W L E D G M E N T

To Dr. Cary, Miss Horrigan,  
and Dr. Mohler I express gratitude for  
their invaluable assistance as members  
of this thesis committee. Especially  
do I thank Dr. Cary for his guidance in  
the selection of the topic and in the  
development of the study. To other  
friends who aided this investigation  
with their suggestions I am grateful.

## F O R E W O R D

Sino-American relations were based on trade. Because of the hazardous nature of this commercial enterprise, however, an additional security was established by treaty. The treaty rights which the United States and other Powers obtained from China in the middle of the nineteenth century gave legal recognition to the practise of encroaching upon China's administrative and territorial entities.

It is the purpose of this study to present a small aspect of the history of the administrative relations between the United States and China. By taking three specific phases the tariff, the judiciary, and communications as representative problems of the broader trend, it will be possible to observe an evolutionary process of development from 1842-1928.



## C H A P T E R I.

## CHINA AND THE POWERS, 1842 - 1928.

A. Encroachments on China's Administrative Integrity

The early relations between China and the Powers were primarily commercial. American merchants entered the China trade at the end of the eighteenth century and endeavored to fit their enterprise into the scheme of an essentially hostile customer nation. For China in her glorious isolation merely tolerated foreign traders. The sovereignty of the Manchu dynasty was not to be challenged by the West before 1842 but it was the imposition of this authority that was a continual source of irritation to the Westerners.

The Chinese had strict regulations for the control of foreigners. The contempt they felt for the mercenary merchants was manifested in these regulations.<sup>1</sup> Imperial decree had made Canton and Macao the only ports open for trade. The Imperial Government had designated certain

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1. K. S. Latourette, "The History of the Early Relations Between the United States and China," Connecticut Academy of Arts and Sciences, XXII (1917), 19.

authorities to have dealings with the foreigners. The Westerners had to live and trade in small areas allotted to them by the Chinese, which they were not allowed to leave. With the exactions levied on foreign products and the general corruption among Chinese officials, foreign traders were working under adverse conditions.

The Westerners felt that this discrimination plus the refusal of China to recognize their governments was detrimental to trade. Moreover, an additional irritation was experienced in the administrative conflict of Oriental-Occidental law. The traders complained of Chinese jurisdiction, emphasizing the wide difference in Eastern court procedure from Western. On the whole the law systems were not too widely divergent.<sup>1</sup> The Chinese emphasized the result of an assault and the English emphasized the intention of a crime. It was regrettable that the legal issues concerning free intercourse on a basis of mutual equality could not have been settled during the test case of the Terranova Affair.<sup>2</sup> This case of an American sailor's death by the Chinese authorities

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1. H. B. Morse and H. F. MacNair, Far Eastern International Relations (Cambridge, 1931), p. 73.

2. K. S. Latourette, "The History of the Early Relations Between the United States and China," p. 63.



for the allegedly accidental death of a Chinese woman well illustrated the legal position of foreigners in China prior to the 1842 treaties.

The foreign merchants felt that some action should be taken to establish diplomatic intercourse and thus insure their collective security for trading by opening more ports and expanding the volume of trade. An opportunity was soon to present itself. Merchants of all nations, including the United States, supplied China with opium to gain a favorable balance of trade. There was a need for a China market commodity to offset the specie basis of trade which resulted from China's not importing foreign goods to an appreciable extent. The importation of opium into China, however, had been illegal and therefore tax free since 1796 and was a profitable contraband product.

The Opium Wars were solely between China and Great Britain over the drug traffic.<sup>1</sup> The Canton authorities had overtly supported the trade since its prohibition, but in 1839 a sudden reform administration had seized all the opium in Canton without warning. The lack of warning and the subsequent loss of \$6,000,000 worth of opium was the primary British objection. However, it was strictly Britain's struggle because she had refused to give bond to the Chinese

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1. K. S. Latourette, "The History of the Early Relations Between the United States and China," p. 110.

Government not to introduce any more opium.<sup>1</sup>

British gunboats quickly subdued the Chinese, and a Treaty of Peace and Commerce was signed at Nanking in 1842. It was incomprehensible to the Chinese that a conquering power that had force would not use it to its fullest extent.<sup>2</sup> However, the seemingly mild Treaty of Nanking granted the privilege of extraterritoriality but did not settle the question of opium importation.

Whenever a British subject has reason to complain of a Chinese he must first proceed to the Consulate and state his grievance.... regarding the punishment of English criminals, the English Government will enact the laws necessary to attain that end, and the Consul will be empowered to put them in force....<sup>3</sup>

Further concessions were exacted by the British. Consuls were given a status to communicate on terms of equality with Chinese officials, provision was made for the Imperial Government to promulgate a "fair and regular tariff of import and export customs and other dues;" and four more Chinese ports were opened to trade.<sup>4</sup>

1. K. S. Latourette, "The History of the Early Relations Between the United States and China," p. 113.
2. R. Y. Gilbert, What's Wrong With China? (New York, 1927, p. 202.
3. W. W. Willoughby, Foreign Rights and Interests in China (Baltimore, 1920), pp. 19-20.
4. G. N. Steiger, A History of the Far East (Boston, 1936), p. 531



When other nations saw Britain concluding a treaty that would facilitate commerce with China they successfully opened negotiations themselves. The treaties signed between China and the foreign Powers in the next two years were known as the First Treaty Settlement. They determined the Chinese-Western relations until 1858 and represented the first measures of administrative encroachment on China's judicial and revenue systems.

It has been contended that the United States reaped profit while the British fought the Opium Wars. In view of our commercial policy this is not a just accusation. We would not join in a forceful expedition for a privilege that the American merchants had been willing to give up voluntarily by signing the bond at the request of the Chinese Government. Later we pledged ourselves to this policy by declaring in the Treaty of 1844, opium to be contraband.

The American treaty was much better than the British in obtaining privileges for its citizens. The treaty definitely claimed extraterritorial jurisdiction. The American delegate, Cushing, had been instructed to support the doctrine that Americans in China should not be subject to the laws and courts of China.<sup>1</sup> He asked for

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1. W. W. Willoughby, Foreign Rights and Interests in China, p. 15.

extraterritoriality on a basis of international law and not as a concession from the Chinese. However, the legal existence of extraterritorial rights rested entirely upon concessions made by China in her treaties with the Western Powers.<sup>1</sup>

Subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China; and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the Consul or other public functionary of the United States, thereto authorized according to the laws of the United States. And in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.<sup>2</sup>

All questions in regard to rights whether of property or person arising between citizens of the United States in China, shall be subject to the jurisdiction of, and regulated by the authorities of their own government. And all controversies occurring in China between citizens of the United States and subjects of any other Government shall be regulated by the treaties existing between the United States and such governments, respectively, without interference on the part of China.<sup>3</sup>

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1. W. W. Willoughby, Foreign Rights and Interests in China, p. 17.
  2. W. M. Malloy, Treaties, Conventions, International Acts, Protocols, and Assignments between the United States and Other Powers, 1796-1909 (Washington, 1910), I, 202-203.
  3. Loc. cit. (idem) ibid.



A Treaty of Peking signed by China and the United States in 1880 further defined extraterritorial privileges for the United States. Consular jurisdiction in civil cases was granted to American nationals.

When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such will be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality, shall be freely permitted to attend the trial and shall be treated with the courtesy due to his position....<sup>1</sup>

Another instance whereby the Powers violated Chinese administration was in the creation of the Mixed Court at Shanghai in 1864. The Court was to hear litigation in both Chinese and Western law and Chinese and foreign jurists were to preside over the Court. Rules were formulated and from 1876 on jurisdiction was based on the principle, "the cases tried by the official of the defendants nationality...., the law administered will be the law of the nationality trying the case."<sup>2</sup>

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1. W. M. Malloy, Treaties, I, 240.

2. H. B. Morse and H. F. MacNair, Far Eastern International Relations, p. 261.

In theory, the laws of the Chinese Empire were supreme and foreigners were bound to respect them. In practise, foreigners were bound to respect Chinese law only as it conformed to the laws of their home countries. The difference was bound to create animosity. The American Government, according to Secretary of State Seward, tried to reconcile the theory and practise of the Mixed Court.

It does not seem necessary or possible to abandon the simple proposition that our people may be dealt with only in our own courts and according to our own laws. But so far as we can hold language to the Chinese which will indicate that we stand upon their soil in an attitude of respect with a determination to sustain the government in the essential attributes of sovereignty,....I maintain only the views of my government--that we ought not to withhold such language nor fail to sustain it in practise by appropriate action whenever the occasion may arise.<sup>1</sup>

The Treaty of 1844 was signed to facilitate peace, amity, and commerce and contained the nucleus of the most-favored-nation clause and prescribed a fixed tariff.

Citizens of the United States resorting to China for the purpose of commerce will pay the duties of import and export prescribed in the tariff which is fixed and made part of this treaty. They shall in no case be subject to other or higher duties than are or shall be required of the people of any other nation

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1. W. W. Willoughby, Foreign Rights and Interests in China, p. 42.



whatever....And if additional advantages or privileges of whatever description, be conceded hereafter by China to any other nation, the United States, and the citizens thereof, shall be entitled thereupon to a complete, equal and impartial participation in the same.<sup>1</sup>

France and Russia also concluded treaties with China at this time. In the Russian treaty a special rebate of one third percent on regular import and export duties was granted on overland and frontier trade.<sup>2</sup> The purpose of this measure was to encourage the overland caravan trade. However, by the most-favored-nation clause other nations claimed the same privilege, and with the event of the railroad, the Powers benefited by it greatly.

The Manchu throne accepted the new relationship which had been established between China and the foreign Powers in these treaties but not all of China acceded. Canton became the center of anti-foreign friction caused by Chinese resentment and foreign violation of the treaty rights.<sup>3</sup>

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1. W. M. Malloy, Treaties, I, 197.

2. J. Arnold, "Tariffs and Internal Taxes," China a Commercial and Industrial Handbook (Washington, 1926), p. 334.

3. G. N. Steiger, A History of the Far East, p. 538.

As a result of dissatisfaction and the recourse to forceful settlement, the foreign Powers signed the Second Treaty Settlement between 1858-1860. This extended foreign control over residence, trade, and diplomatic representatives in Peking. The original treaties had expired about this time, and the Chinese Government had been inclined to refuse to sign renewals. Great Britain and France won their rights by force in the Second Anglo-French War, while the United States gained further concessions through diplomacy.

In this Settlement the American Treaty clearly stated the principle of the most-favored-nation treatment. China's incompetence, then, would enable the Powers to form a bloc against her through terms of this provision.<sup>1</sup>

The contracting parties hereby agree that should at any time, the Ta T'sing Empire grant to any nation, any right, privilege or favor, connected either with navigation, commerce, political or other intercourse, which is not conferred by this treaty, such right privilege and favor shall at once freely inure to the benefit of the United States, its public officers, merchants and citizens.<sup>2</sup>

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1. C. C. Wang, "How China Recovered Tariff Autonomy," American Academy of Political and Social Science, CLII (November, 1930), 267.
  2. W. M. Malloy, Treaties, I, 221.



Discontent with misgovernment and with China's increasing contact with the West, religious fanaticism, and revolutionary secret societies caused an uprising against the Manchus. China was disrupted by the T'ai-ping Rebellion from 1850-1860. The Powers co-operated during the rebellion to carry out the American policy of supporting the Imperial authorities, thus staving off dismemberment of the Empire which might have followed the success of the T'ai-pings.

The Revolutionists had threatened to seize the Imperial administration at Shanghai and the Powers united to prevent this action by further encroachment upon China's administrative integrity. The American, British, and French Consuls at Shanghai agreed to establish a Customs Office under foreign control to collect the tariff of import and export dues for the Imperial Government. The Manchu ruler approved of this action as an expedient measure. Continuation of the collection then came about because the arrangement proved satisfactory to both foreign traders and the Chinese Government.

Foreign concessions and the experience of intermittent warfare with France on her Southern boundary led the Chinese Government to build telegraph lines and to foster communications improvements within the Empire.<sup>1</sup> The

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1. H. H. Gowen and J. W. Hall, An Outline History of China (New York, 1927), p. 293.

first steam railroad was also constructed by the British about this time. In the face of foreign development, the Manchus endeavored to have a foreign policy that would prevent complete administrative control by treaty powers. The Chinese Foreign Office issued a circular in 1878 explaining its policy. In general it agreed in the efficacy of most-favored-nation treatment but complained of the abuses in the system whereby nations would interpret concessions gained through the most-favored-nation clauses to their own advantage.

The Empire had never been restored to its supreme position after the T'ai ping Rebellion. Dissension that had existed within the Empire before it had assumed treaty obligations was now accentuated. Anti-Manchu revolutionary societies, robbery and brigandage, anti-Christian demonstrations, and official corruption were all significant factors in the decadence of the Empire. The Manchus, however, managed to maintain the respect of the West for three decades after the Second Treaty Settlement in spite of encroachments on their administrative and territorial integrity and rampant domestic turmoil.<sup>1</sup> Finally the Chinese-Japanese controversy over China's vassal state, Korea, broke the feeble hold of Manchu prestige at home and

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1. G. N. Steiger, History of the Far East, p. 560.



abroad.

Japan had been trying to "open" Korea to commercial enterprise ever since she started on her own path of Westernization. The Japanese succeeded in signing a commercial treaty with Korea in 1876. This treaty was Japan's first step in expansion on the mainland.<sup>1</sup> From this time on Japan worked toward destroying China's suzerainty over Korea.

Western nations had contributed to China's humiliation by Japan because they interfered in Korea by signing commercial treaties, too, and thus they stimulated anti-foreignism and Chinese-Japanese rivalry. This rivalry culminated in war in 1894. The period after the war marked the ascendancy of Japan as a Far Eastern Power and started China on her precipitous course of reform and revolt, heightened by foreign aggression against her administrative and territorial sovereignty.

The disgrace China had to bear after the Japanese war brought forth an immediate reaction. It started among the educated classes with a demand for administrative reform. The first expressions of dissatisfaction were in the form of memorials to the throne containing proposals for

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1. H. B. Morse and H. F. MacNair, Far Eastern International Relations, p. 389.

reform and protests against ratification of the Treaty of Shimonoseki. Societies to propagate reform were quickly formed. The infiltration of new ideas inevitably became revolutionary and this movement was ably led by Sun Yat-Sen, chief of the revolutionary party.

Another phase of reform emphasized constitutional revision. The Emperor, Kuang Hsu, became an adherent of this mode of strengthening the Empire against foreign encroachment. He tried to institute the change by a series of reform decrees in 1898. There was an element of pathos in the failure of the Emperor's decrees. The haste which he felt was necessary was, in reality, a mistake. The entire project was too ambitious for a man ignorant of administrative procedure and unable to inspire followers. The program proved to be too revolutionary for ancient Chinese tradition to assimilate.

The reform decrees alarmed the Manchus who turned to the Dowager Empress, Tzu Hsi, who favored the conservative element at court. The Emperor, meanwhile, went too far with his reform and planned a revolution which would dispose of the Dowager's influence and destroy the conservative party. The Empress heard of the plot and immediately executed a coup d'etat, dethroned the Emperor, and resumed the regency.



B. Attempted Rejuvenation of Administrative Integrity

China, emerging from war with Japan, had to contend with new encroachments on her sovereignty. Private individuals backed by their governments exploited China with the avidity of inseparable combinations.<sup>1</sup>

The result of this merging of individual with governmental interests has been that matters which would elsewhere be of merely commercial character, susceptible of judicial determination in case of dispute, are in China matters of international political concern, for the settlement of which the ultimate recourse is to diplomatic action. It is thus in a sense true that the international status of the Chinese Government is determined and conditioned by its business contracts with individual foreign firms or syndicates, scarcely if at all less than by its formal Treaties with other Governments.<sup>2</sup>

This situation was emphasized when China was forced to admit foreign capital to pay the indemnity to Japan and was forced, also, to grant territorial concessions to the Powers who had helped lighten the Shimonoseki terms. A double burden was thereby placed upon the defeated nation. The first Power to get a lease was Germany, Kiachow on March 6, 1898. Russia leased Port Arthur, April 2; Britain

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1. J. V. A. MacMurray, Treaties and Agreements with and concerning China, 1894-1919 (New York, 1921), I, xiii.

2. Ibid., p. xv.

leased Weihaiwei, April 10; France leased Kwang-chow wan, June 9; and Britain obtained more land on the Kowloon Peninsula.

While the scramble for concessions was going on in 1898, the United States was busy with war with Spain. The next year, when the question of the annexation of the Philippines came before the American Government the islands were looked upon by many as a base for the China trade.

The new imperialism in the United States was soon to be applied to China. Through the close relations among the members of the American and British State Departments,<sup>1</sup> the American Secretary of State, John Hay, was persuaded to send identic notes to the Powers requesting their support in upholding equal commercial opportunities in China. These notes gave expression to the American heritage of the principle of an open door for trade in China plus the so-called co-operative policy to maintain it. The diplomacy was enacted to prevent the probable partition of China among the Powers who had received territorial concessions. The Chinese Government was not invited to partake in the correspondence.

While Hay was announcing the Open-Door principle, the Chinese Government was preparing to resist by force

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1. A. W. Griswold, The Far Eastern Policy of the United States (New York, 1938), pp. 64-68.



further foreign aggression. A general spirit of unrest was characterized by anti-foreignism, anti-missionary demonstrations, and anti-reformation activity. To promote the Empress' reactionary policy of preserving the Empire by strengthening old institutions and denying further foreign concessions, the throne encouraged roving militia bands and patriotic societies called Boxers. The movement gained momentum and finally became dangerous to the life and property of foreigners in China. The legations ordered the Empress to suppress the Boxers. This request, however, was ignored.

The Manchu support of the anti-foreign movement played into the hands of the Powers and presented a perfect opportunity for them to enlarge their spheres of influence. Partition of China was again threatened and Hay sensed the need for a more forceful measure of insuring commercial equality. Accordingly, he sent a circular note to the Powers July 3, 1900, declaring that it was the policy of the United States, "to preserve Chinese territorial and administrative entity....and safeguard for all the world the principle of equal and impartial trade with all parts of the Chinese Empire."<sup>1</sup>

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1. G. N. Steiger, A History of the Far East, p. 694.

The Hay statement gradually assumed the characteristics of an American policy, a means of defense for China. It meant the intervention by the United States in a region where American interests were always comparatively small. The United States was thereby committed to a policy it could hardly hope to defend in view of the American public's reluctance to use force and the repercussion of European realpolitik in China.

Meanwhile suspicion had been aroused in China when foreign marines and naval forces were landed to protect the legations and foreign nationals. The War Party at court succeeded in declaring a state of war between China and the outside world. In the ensuing conflict, atrocities were committed by both sides but the foreign forces were victorious. Officials in the Central and Southern Provinces, notoriously anti-Manchu, refused to obey war orders from Peking and this neutrality kept the Boxer Rebellion from becoming of greater proportion. The United States joined an Allied expedition to relieve the besieged legations in Peking and this punitive force brought the uprising to an end. The Powers then united to impose a diplomatic settlement upon the Chinese Government for the damage done by the Boxers.

The Powers signed a Peace Protocol with China in



1901. By the terms of this agreement, an indemnity of four hundred and fifty millions of Haikwan Taels was charged to China.<sup>1</sup> A bond issue was floated to pay the indemnity, security for the bonds being assigned to different sources of national revenue. Terms of the Protocol were lightened for China by the United States in 1908 when Congress adopted a resolution providing for the remission of a portion of the American share of the Boxer indemnity. Upon final adjudication it was found that the claims of American nationals totaled less than the apportioned amount of the indemnity. The remittance was a gesture of friendship to set up a fund for the education of Chinese youth.

The British signed a treaty with China in 1902 revising commercial treaties as had been provided in the Boxer Protocol. The United States and Japan followed with similar treaties a year later. Terms of these treaties were of three types: in the interest of general trade; for the reform of the Chinese Government; consideration for the interests of the United States, Great Britain and Japan.<sup>2</sup>

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1. J. V. A. MacMurray, Treaties, I, 280.

2. H. B. Morse and H. F. MacNeir, Far Eastern International Relations, p. 495.

In the American Treaty, provision was made for the abolition of likin. This tax had been detrimental to the development of China's internal trade as well as a source of annoyance to the Powers.<sup>1</sup> "Likin" (meaning contribution of a thousandth, i.e. one-tenth of one percent) was a tax imposed on goods on inland transit. Its original purpose had been to meet the expenditures of the T'ai ping Rebellion. Likin stations were placed at all large towns and along the main routes of land and water trade. A provincial responsibility, generally collected by the military governor, the tax was a source of irritation to foreign merchants. Faulty imposition rendered likin most severe on railway lines where the specified weight of goods was recorded and thus the practise of mutual "adjustments" between trader and likin official were made cumbersome. The United States allowed China compensation for abolishing this means of revenue:

....The Government of the United States in return, consents to allow a surtax, in excess of the tariff rates for the time being in force, to be imposed on foreign goods imported by citizens of the United States and on Chinese produce destined for export abroad or coast-wise. It is clearly understood that in no case shall the surtax on foreign goods exceed one and one half times the import duty leviable

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1. J. Arnold, "Tariffs and Internal Taxes", p. 339.



in terms of the final Protocol signed by China and the Powers....<sup>1</sup>

America was dictating administrative policy to China that she was treaty bound to uphold. Nevertheless, the principle of Chinese sovereignty was duly accredited.

Nothing in this article is intended to interfere with the inherent right of China to levy such other taxes as are not in conflict with its provisions....<sup>2</sup>

The promise of relinquishing extraterritoriality was included in this treaty. China and the Powers had been in dispute over law and jurisdiction since the beginning of the nineteenth century.

The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of the Western nations, the United States agrees to give every assistance to such reform and will also be prepared to relinquish extraterritoriality rights when satisfied that the state of the Chinese laws, the arrangements for their administration and other conditions warrant it in so doing....<sup>3</sup>

Accordingly, Chinese law reform commenced as a fulfillment of the terms of the Treaties of 1902 and 1903.

1. W. H. Malloy, Treaties, I, 263.

2. Loc. cit.

3. Ibid., p. 269.

Legal reform was to be a gradual process. A criminal code was promulgated in 1907.<sup>1</sup> A body of Rules for the application of Foreign Laws was later formulated. In keeping with its power, the Congress of the United States tried to correct the evils of the extraterritorial system in China by creating the United States Court for China in 1906. This Court had exclusive jurisdiction in all cases and judicial proceedings that came within the scope of the extraterritoriality system.

The surface reform instituted by the Throne was farcical. Letting the Empress and her court return after the Peace Protocol was signed was a mistake for which China would have to pay in misery and suffering.<sup>2</sup> The fad for constitutions and codes of law that the Throne promulgated in the last days of its existence was mistaken for the representative attitude of the Chinese mind. On the other hand, reformers and many high ranking officials were sincerely desirous of having a constitutional monarchy and wanted neither revolution nor reaction.

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1. H. S. Quigley, "Extraterritoriality in China", American Journal of International Law, XX (January, 1926), 61.

2. R. Y. Gilbert, What's Wrong With China?, p. 233.



Yet Revolutionary activity was being carried out all the time by Sun Yat-Sen and his followers. As the prestige of the Manchus began to fall after the Boxer Revolt, the aroused patriotism of the people became more and more favorable to revolution.<sup>1</sup> Failure of the revolt plus the helplessness of China in 1904, when Japan and Russia fought on her soil, convinced the most conservative that the way to avoid national ruin was through reorganization and the adoption of western ideas.<sup>2</sup>

The opening decade of the twentieth century in China was characterized by reform, revolt, and revolution. The movement for constitutional government plus the decaying Manchu dynastic authority in Peking were supplemented by agitation for provincial autonomy in the South and West. The provinces were resisting the Central Government's railway policy of nationalization. They objected to the strength the Manchus would receive from foreign loans, the centralized railway system, and the loss of revenue that they would experience in this system.

Passive resistance in the form of a strike against

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1. L. S. Hsu, Sun Yat-Sen His Political and Social Ideas (Los Angeles, 1933), p. 59.

2. K. S. Latourette, The Chinese, Their History and Culture (New York, 1934), p. 427.

the railroad project in Szechwan province initiated the revolution. Revolutionary plots were then uncovered in many of the provinces and fighting and rioting broke out. The persistence of the revolutionaries, the conservatism of the Manchus, and the neutrality of the Powers in refraining from making a loan to the Empire brought about the downfall of the Manchu dynasty in 1911.

A Republic was proclaimed for China and Yuan Shih-k'ai a former Manchu official was elected president. Yuan's election as permanent executive was a conservative triumph because the Revolutionary Provisional Parliament had been dominated by Sun Yat-Sen's Nationalist Party. The Nationalists objected to Yuan Shih-k'ai's loan policy with the foreign banking groups. This was the Reorganization Loan Agreement from which the American Banking Group withdrew its support because Wilson considered it to be a threat to the administrative independence of China. Though Parliament and the provinces protested the loan, Yuan succeeded in forcing the Nationalists to retire from the Government and he proceeded to set up dictatorial power. The Kuomintang (National People's Party) continued as an active political party in the South and awaited the opportunity for seizing control of the government.



### C. The Chinese Republic and Administrative Integrity

The war in Europe destroyed the balance of power in the Far East and substituted for it American-Japanese antagonism.<sup>1</sup> While the leading British trade suffered during the war, Japanese and American commercial enterprise prospered. Japan, however, added territorial and administrative aggrandizement to her commercial policy by seizing the German possessions in Shantung.

The Japanese presented the government of China with an ultimatum of twenty-one demands on January 18, 1915. These demands were for special concessions and privileges for Japan in Shantung, drawn up in five groups that brought forth an immediate note of protest from the United States. This note had given Japan hope, however, that America would inaugurate a China policy more in keeping with Japan's interests in China. For in it, Bryan had recognized, "that territorial contiguity creates special relations between Japan and those districts," to which she claimed rights.<sup>2</sup>

The Chinese Government, "with a view to preserving the peace of the Far East, hereby accepts, with the exception

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1. A. W. Griswold, Far Eastern Policy of the United States, p. 176.

2. Ibid., p. 192.

of those five articles of Group V postponed for later negotiations, all the articles...."<sup>1</sup> China had successfully eluded political vassalage by violating the pledge of secrecy and informing the United States of the Ultimatum.<sup>2</sup> Such a step had given her the moral courage to refuse the fifth category (with the exception of an article concerning capital for railways, mines, and dockyards) before the United States had sent a second warning to Tokyo. In its second note the policy of the United States seemed to be stiffening.

....that it cannot recognize any agreement or undertaking which has been entered into or which may be entered into between the Governments of China and Japan impairing the treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China, or the international policy relative to China commonly known as the Open-Door Policy.<sup>3</sup>

This was the first expression of the famous non-recognition policy. Drafted by Lansing, it accomplished its purpose, made Japan doubt the free reign of the Bryan

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1. A. W. Griswold, Far Eastern Policy of the United States, p. 193.
  2. Paul Birdsall, Versailles Twenty Years After (New York, 1941), p. 85.
  3. J. V. A. MacMurray, Treaties, II, 1236.



note and led Tokyo to feel the need of an understanding with the United States concerning China.<sup>1</sup> Japan, meanwhile, had assured herself a place at the Peace Conference by signing the Declaration of London with England, France, and Russia, agreeing not to make a separate peace.

China, too, was concerned with attending the Peace Conference. Entering the war with the Allies, however, was more than the simple reply to Wilson's call to the democracies.<sup>2</sup> Public opinion on the war was divided in China. The Peking Government wanted financial assistance and treaty revision from the Powers as the price for China's entrance.<sup>3</sup> Chinese merchants were opposed to war because trade as a neutral nation was extremely profitable. Kuomintang leaders feared the suppression of constitutionalism and control by the militarists if war were declared. However, China's hopes for treaty revision at the Conference predominated. The President of China disregarded a suggestion by the United States that internal/<sup>reform</sup> was of prime importance for China, dismissed Parliament, and declared war against the Central Powers August 14, 1917.

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1. A. W. Griswold, Far Eastern Policy of the United States, p. 195.
  2. Ibid., p. 197.
  3. R. T. Pollard, China's Foreign Relations (New York, 1933), p. 10.

Two years later the Chinese delegates attended the Paris Conference presenting a united front but not representing a united nation, for both North and South had reconciled differences merely to attend the Conference.<sup>1</sup> China had one objective and one purpose, restoration of Germany's possessions and protection from Japan.<sup>2</sup> The hope was also expressed that the Conference would take steps leading to the eventual removal of other foreign restrictions upon China's sovereignty. A list of questions for readjustment was submitted calling for the renunciation of all spheres of influence or interest, the withdrawal of foreign troops and police, foreign post offices and agencies for wireless and telegraphic communication, the abolition of consular jurisdiction, the relinquishment of the leased territories, and the restoration of foreign concessions and settlements and tariff autonomy.<sup>3</sup>

Wilson sounded Lloyd George on a proposal that all Powers forego their special rights in China but the

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1. H. F. MacNair, "Political History of China Under the Republic," American Academy of Political and Social Science, CLII (November, 1930), 217.

2. H. B. Morse and H. F. MacNair, Far Eastern International Relations, p. 602.

3. Ibid., p. 603.



British Government did not agree. When the case of Shantung came up for discussion, the legal and diplomatic strength of the Japanese claim, plus the bargaining power of the race question in the League, were potent enough to defeat China.<sup>1</sup>

News of the Shantung decision brought forth a student and coolie demonstration of protest in China. The defeat was a humiliation for both North and South but it was to have a positive effect on Southern Nationalism. Increasing dissatisfaction in the Southern Provinces where republican and constitutional thought was inclined to be radical had led to the convocation of the members of the Peking Parliament at Canton in 1920. The Canton Government then sought to obtain de facto recognition from the foreign Powers and the Canton President, Sun Yat-Sen, issued a manifesto claiming the legitimacy of the Canton regime to the world at large.

Constitutional development had been retarded in China from lack of executive energy and political leadership.<sup>2</sup> In actual practise the name Republic had been given to a conglomeration of governments from bandit gangs to representative

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1. Paul Birdsall, Versailles, p. 109.

2. W. W. Willoughby, Constitutional Government in China, (Washington, 1922), p. 33.

regional bodies.<sup>1</sup> The central theme in Chinese history of this time was the evolution of Nationalism. The South did not consider that the Revolution had been completed. The Government at Canton adopted the basic principles of Sun Yat-Sen's San Min doctrine (Three People's doctrine).<sup>2</sup> It contained the three principles to guide the revolution and set up a republic in China. They were nationalism, democracy, and economic livelihood. The economic well being of the people was a government obligation to provide food, clothing, shelter, and transportation according to their needs. Democracy, it was hoped, would evolve from three political stages of military dictatorship, political tutelage, and constitutional government. Nationalism expressed resistance to foreign aggression and an opportunity for treaty revision to re-gain international equality among the Powers.

The foreign program of the Nationalist Party was based on the principle of Nationalism. The objective was not anti-foreignism but pro-abrogation of unequal treaties. Treaty revision on the basis of reciprocity and equality

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1. P. M. A. Linebarger, The China of Chiang K'ai-shek (Boston, 1941), p. 4.

2. W. W. Willoughby, Constitutional Government in China (Washington 1922), p. 33.



was desired. By unequal treaties, the Nationalists meant those which denied the fundamental rights of a free and sovereign state, granted leases permitting foreign nations to exercise dominion in Chinese territory, deprived China of the regulation and control of Customs and exempted foreigners from the jurisdiction of Chinese laws and courts. It was impossible to separate the problem of internal reform from the problem of foreign treaties because of their interlocking nature.

The Washington Conference in 1922 marked a highlight in the relations between China and the Powers. China asked for treaty revision in accordance with the Nationalist aims as she had in 1919. The hope and promise for revision and administrative autonomy requested in 1922 were to become involved in domestic turmoil of the post-Conference period. China experienced violent civil war from 1925-1927. Anti-foreign agitation became active in this endeavor to bring China back to her full sovereign position.

The Revolution to which Sun Yat-Sen had devoted his life was greatly strengthened by popular demonstrations between Chinese and foreigners. Radical labor organizers led strikes and instigated boycotts against the British and Japanese in 1925.

The textile mill strikes of this year were both

political and economic. They were associated with anti-foreignism and were also protestations against the foul working conditions imposed by the British and Japanese mill owners. The student agitation against Tuan Chi-jui's (pro-Japanese) Peking Government was an accusation against imperialism. That the executive did not suppress the agitation had an important effect in Shanghai. Here strikers were dispersed when the Settlement police fired into the crowd and killed several Chinese.

The Chinese Government seized upon this "massacre" as a chance to re-open a diplomatic campaign for the fulfillment of old demands and to bring about the re-adjustment of treaty relations on the basis of national desires.<sup>1</sup> The Peking Government sent a note to the Powers demanding: the right of Chinese laborers to vote for the appointment of a Chinese member on the Hongkong legislative staff; the return of the Mixed Court at Shanghai and Chinese representation on the Municipal Council of the International Settlement; and a request for treaty revision and the abolition of extra-territoriality. The attitude of the Powers in response to this note of June 24, 1925, was generally conciliatory

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1. E. O. Hauser, Shanghai: City for Sale (New York, 1940), p. 155.



as can be seen from Britain's turning her concessions in Hankow and Kiukiang over to the Nationalists and the Powers preparing to convene the tariff conference and extraterritoriality commission as provided at Washington in 1922.

This same year a re-organization conference was held in an endeavor to bring Sun Yat-Sen (Canton) and Chang Tso-lin (Manchuria) to the support of Tuan Chi-jui (Peking). The plan failed with the death of Sun, and the Manchurian war lord withdrew. Civil war resumed in Northern China, and the Manchurian tuchun succeeded in defeating the Peking forces. Civil Government was suspended in Peking, and a military dictatorship was established under Chang-Tso-lin.

Meanwhile the Nationalist army captured Nanking on their march northward from Canton. While troops of the Peking Government were evacuating the city, units of the Nationalist army attacked foreigners and foreign property.<sup>1</sup> This incident caused a breach between the Moderates and Radicals in the Nationalist Party. The friction with the Moscow Communists in the Kuomintang had been coming since 1926. In January of that year, the Nationalist General Chiang K'ai-shek broke relations with his Russian adviser

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1. G. P. Howland, Survey of American Foreign Relations (New Haven, 1930), p. 139.

Borodin. In March there was an anti-Communist purge in Canton but by the next month money was advanced by Borodin to win Chiang back temporarily. The Government moved to Hankow in December and by the following March, 1927, the Radicals attempted to discredit Chiang by staging the Nanking affair.

The policy of patient conciliation which the Powers had adopted toward China changed abruptly.<sup>1</sup> An identic note of protest was sent to the Nationalists demanding punishment, apology, and reparation. The Chinese reply was not favorable. The Nationalists dwelled upon "unequal treaties" as the real cause of danger to foreigners. They expressed willingness to make good damages after an impartial investigation had been made to place the blame where it belonged.

Some of the Powers desired joint military measures, but at this stage of negotiation, the United States withdrew and the demand for reprisals accordingly dropped. This action influenced the course of treaty revision in favor of diplomacy and peaceful negotiation. Such action was agreeable to both North and South China.<sup>2</sup> The

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1. R. T. Pollard, China's Foreign Relations (New York, 1933) p. 304.

2. Ibid., pp. 308-309.



Peking Government had concluded treaties with Austria and Finland concerning commerce and diplomatic exchange. Another sovereign triumph of the year was made in a treaty with Belgium whereby China gained the right to terminate agreements by unilateral action, the Belgian Treaty of 1865 was revised by this process.

On the military front the Nationalists were moving on toward Shanghai. An expeditionary force of 20,000 British, American, French, Japanese, Belgian, Italian, Dutch, and Spanish troops was ready to protect foreign interests. The need of money for his army cause General Chiang K'ai-shek to ask Chinese bankers in Shanghai for a loan.<sup>1</sup> Their reluctance to have any connection with Bolshevism brought forth a refusal to finance Chiang.<sup>2</sup> Finally T. V. Soong, capable Cantonese banker, convinced Chiang to break relations with the Communists and ally with the bankers.<sup>3</sup> When the transaction took place and the seige of Shanghai lifted, the British expeditionary force reaped sole credit for the preservation of peace.<sup>4</sup> Chiang had the resources to set up a new non-Communist Government at Nanking. The Chinese Communist Party was forced to submerge but was not wiped out. It was felt by many of Chiang's Party that his compromise with the Powers and the compradore diplomats brought his new Nanking Government into dependence upon them.<sup>5</sup>

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1. E. O. Hauser, Shanghai, p. 167.

2. Loc. cit.

3. Ibid., p. 177.

4. Ibid., p. 181.

5. Ibid., p. 205.

#### D. Summary

The history of China's administration shows a continuous conflict between the treaty Powers and China for control of administrative functions.

The first instance of administrative encroachment by the foreign Powers was the low tariff rate in the prescribed schedules of the treaties in the First Treaty Settlement. The inclusion of extraterritorial jurisdiction for foreigners in this Settlement and in further extensions of the right were other violations of Chinese administrative entity.

Economic exploitation and territorial aggrandizement were at their height after the Chinese-Japanese war. The fundamental weakness of the Manchu regime made this foreign aggression possible. Western wealth and organization also proved too powerful for Republican China to regain the sovereign rights surrendered by the Empire. The interlocking forces of foreign diplomacy and business rendered the new China impotent.

China's great liability in the matter of attaining satisfactory treaty revision was disunity in the Republic between the North and South. Civil war merely made the Powers more anxious to retain their hold on Chinese administration.



China presented her demands for treaty revision to the Powers at the Peace Conference in 1919 and they went unheeded. Again in 1922 at the Washington Conference, the Nationalist aims were presented to the Powers. For North and South united, in one respect, for treaty revision. The unity China manifested before the world at large at the Washington Conference is the introductory element in this study of administrative problems.

The primary purpose of the Washington Conference was for the consideration of disarmament, thus lessening the possibility of war in the Pacific rather than to bringing relief to China. It was not expected that China would obtain all she desired because she did not have the governmental organization to defend attacks upon her sovereignty. The discussion of the Far Eastern Question was supplemental to the question of devising a method of limiting armament.

Although China asked the Conference to accept ten points of principles and general policies for procedure that would insure her sovereignty, the Powers substituted the Root Resolutions as blanket policy to be incorporated in the Nine Power Treaty concerning China. Mr. Root looked upon the "resolutions as an expression of present intentions and purposes....."<sup>1</sup> The fourth resolution, initiated by

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1. "Conference on the Limitation of Armament", Senate Document, vol. X, 67th Cong., 2d Sess. (Washington, 1922), p. 457.

the American delegation was a diplomatic victory for China that calmed her fears that further encroachments were contemplated against Chinese sovereignty.<sup>1</sup>

- (4) To refrain from taking advantage of the present conditions in order to seek special rights or privileges which would abridge the rights of the subjects or citizens of friendly states and from countenancing action inimical to the security of such states.<sup>2</sup>

The well publicized Shantung controversy was settled outside the Conference. The Japanese treaties of 1915 were abrogated, Kiachow was restored, and modifications were made in Japan's "vested rights" in Shantung.

A Nine Power Treaty was signed among the United States, Belgium, Great Britain, China, France, Italy, Japan, the Netherlands, and Portugal defining principles and policies to be followed in matters concerning China. This treaty was the most ambitious attempt by the Powers to help Chinese rehabilitation.<sup>3</sup> Lack of co-operation in carrying out these principles and policies was to give the obligation

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1. W. W. Willoughby, China at the Conference (Baltimore, 1922), p. 43.
  2. "Conference on the Limitation of Armament", Senate Documents, p. 460.
  3. A. N. Holcombe, "Can Nations Co-operate in the Rehabilitation of China?", American Academy of Political and Social Science, CLII (November, 1930), 348.



of reform in China to the Chinese themselves.<sup>1</sup>

Signing the Washington treaties did not mean that the United States had decided to abandon its interests in China.<sup>2</sup> Hughes applied a traditional policy of retreat because he, like Roosevelt, realized that America would not fight for the preservation of the territorial or administrative integrity of China. The reason was well known, American commerce and investment were never overwhelmingly large in China. Thus other Powers were invited to make our announced policy multi-lateral. The American Government had an interest at stake for it had to evaluate the need for protecting business interests in China or the prestige to be gained from potential but not actual force. By inviting other Powers to share the principle of upholding the Open-Door, the United States seemed to emerge from the conference with a policy that compromised the issue of upholding Chinese integrity and supporting American investment in China.

China made specific demands at the Conference for administrative autonomy which were not recognized as such by the Powers. The Conference members met the flat request

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1. A. N. Holcombe, "Can Nations Co-operate in the Rehabilitation of China?", American Academy of Political and Social Science, CLII (November, 1930), 350.
  2. A. W. Griswold, Far Eastern Policy of the United States, p. 321.

for tariff autonomy evasively by providing for measures to increase the tariff yield and apply the surtax promised in 1903. China maintained no hope that extra-territoriality would be abolished in 1922. However, she asked that steps be taken toward the eventual relinquishment of the right and she was rewarded with the promise of a commission to investigate the judicial systems. The Conference denied China's right to wireless autonomy by re-affirming the treaty grant given to foreign powers in the Boxer Protocol in 1901. From the stipulation that the Powers could keep communications open between Peking and the sea, wireless stations had been built by foreign companies in China and supported by foreign governments.



## CHAPTER II.

## TARIFF AUTONOMY

"Immediately or as soon as circumstances will permit, existing limitations upon China's political, jurisdictional, and administrative freedom of action are to be removed."<sup>1</sup>

This statement was one of China's ten points of principle and procedure to be deliberated at the Washington Conference of 1922.

The first thing that the American delegation did was to deny the validity of this point. Mr. Root, of the American delegation, maintained that respect for Chinese sovereignty required respect for the valid agreements China had made.<sup>2</sup> China had made a series of tariff treaties limiting herself to five percent customs duty. In this regard, recognizing China's administrative integrity involved respect for those limiting treaties. Legality would not necessarily, however, preclude modification to help China. Root expressed a desire to see agreement among the Powers to permit China to increase her customs duties.

In answer, Mr. Koo, Chinese representative,

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1. "Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong., 2d. Sess. (Washington, 1922), p. 444.

2. Ibid., p. 457.

pointed out that the tariff question was dual in character, political and technical. He hoped consideration of the problem would follow along these lines. Dr. Koo then asked for the return to China of the right to tariff autonomy. China was laboring under the burden of:

- (1) a three and a third percent tariff in view of the prevailing commodity prices,
- (2) an infringement of the sovereign right to fix the tariff rates,
- (3) inability to make reciprocity arrangements with the powers,
- (4) no-differentiation of rates between luxuries and necessities,
- (5) a loss of revenue to the Chinese exchequer,
- (6) difficulty to bring about revision to an effective five percent.<sup>1</sup>

In asking for tariff autonomy, China professed no desire to interfere with the present administration of the Maritime Customs nor to interfere with foreign loans secured to them.<sup>2</sup> Referring to the treaties of 1902 and 1903 as precedent to raise the Chinese import tariff to twelve and a half percent, Mr. Root reminded Mr. Koo that those treaties intended the increase as compensation for the abolition of likin. Mr. Koo agreed on this point and emphasized the fact

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1. "Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong., 2d Sess (Washington, 1922), p. 444.

2. Ibid., p. 471



that China was anxious for the abolition of likin as it impeded domestic trade as well as foreign.

Senator Underwood, of the American delegation, read the report of the subcommittee on tariff. In the main, the report stated that there were two phases of tariff re-adjustment. One of these might become immediately applicable without treaty form, related to revision on the basis of an effective five percent tariff.<sup>1</sup> A committee of revision would meet at Shanghai for this purpose. The additional revenue it expected to raise for China was set at approximately \$17,000,000 silver. The second phase of adjustments, which must be in treaty form, required ratification of subjects to be dealt with in a special conference. To apply this phase, steps would be taken for the convening of a special conference to abolish likin and bring the surtaxes of the treaties of 1902 and 1903 into effect. Both of these measures concerning China's tariff were incorporated in a treaty signed by the nine member Powers relating to revision of the Chinese Customs Tariff.

An annex or protocol to the Treaty was advanced, embodying the statement by the Chinese delegation of their intention not to change the present administration of the

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1. Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong., 2d Sess. (Washington, 1922), p. 590.



Chinese Maritime Customs. Mr. Koo objected to making domestic policy of the Chinese Government an international treaty obligation.<sup>1</sup> Senator Underwood, backing Mr. Koo, spoke for a large number of Americans who, he said, would protest a treaty coercing China into an agreement that was unsatisfactory to her. Mr. Koo added that the Chinese declaration did not mean that China had foresworn her "legitimate aspiration to make the Chinese Maritime Customs service an institution more national in China."<sup>2</sup> It was unanimously agreed that the Chinese voluntary declaration of policy would not be publicly announced in the treaty. This concession was a diplomatic victory for the Chinese.

However, the request for tariff autonomy was not granted in 1922. The Powers admitted the need for modification of China's customs tariff and provided for it, but the "existing limitation on her sovereignty" was not removed. Pollard in his study of the period give special commendation to the capable Peking diplomats who represented China at this time. Their accomplishments were significant in the development of treaty revision, though they failed because of lack of support at Peking.<sup>3</sup> The militarists who

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1. "Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong., 2d Sess. (Washington, 1922), p. 770.

2. Ibid., p. 773.

3. R. T. Pollard, China's Foreign Relations, (New York, 1933), p. 406.



controlled Peking denied the constructive work of the diplomats and used the Peking Foreign Office as a buffer between their Government and the Foreign Powers.

The work of the Revision Commission provided by the Customs Treaty was completed by September 28, 1922, and the American State Department was prepared to publish the revised schedule before the Customs Treaty was actually ratified. To do so it was necessary to obtain the separate approval of each government concerned. The Japanese delayed concerted action by suggesting a two weeks advance notice of the revised schedule before it should be put into effect.<sup>1</sup> The Powers accepted this plan and thereby delayed the application of the import tariff until January 17, 1923.

Once the technical aspect of the tariff problem had been settled, the political phase emerged as a focus of international interest. The United States was anxious to have the tariff question discussed as an entity. Hughes instructed the American Banking Group to formulate a plan for dealing with China's unsecured debts and thus relieve the coming Special Conference from the burden of discussing Chinese finance.<sup>2</sup> For the State Department felt that

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1. Foreign Relations, 1922, I, p. 821.

2. Foreign Relations, 1923, I, p. 532.

unsettled finances could prevent a constructive use of the proposed customs surtax that was to be implemented at the Special Conference. Hughes feared that a political reaction would then take place when the Chinese saw the misuse of the surtax expenditure. Also, a point to be considered, some of China's unsecured debts (notably the Japanese Nisihara loans) were connected with controversial political questions.<sup>1</sup> Their political character would cause agitation at the Special Conference and confuse the main issue. Hughes' analysis proved later to be accurate, but no action was taken on the matter at this time.

In 1923 the Powers had to determine an immediate policy with regard to the distribution of customs surplus funds to the two Chinese Governments which were claiming them. Our interests in the Customs lay in the pledge of the Chinese Maritime Customs revenues as security for the payment of the Boxer indemnity. This connection brought the Customs under treaty rights in the event that maintenance was endangered.

The Canton authorities threatened to seize the Maritime Customs to secure their share of the surplus. The Secretary of Foreign Affairs for the Canton Government

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1. Foreign Relations, 1923, I, p. 536.



presented the diplomatic body with "the claim of the Southwestern provinces for their share of the customs surplus."<sup>1</sup> His note lodged a complaint against distribution of the surplus which remained after the payment of foreign debts. He declared that the surplus paid past debts of the Peking Government and thus set free other revenues which were then used by Northern militarists to make war against the South. Canton promised that it would use its share of the funds for constructive purposes: municipal improvements; provincial roads; currency reform; river conservancy; agriculture and sericulture; education and the suppression of piracy. The note denied the validity of the Peking Government and condemned the policy of the United States for recognizing it as the Government of China.

The issue at hand for the United States was danger of disintegration of the customs service. Because of the basis in treaty right, Coolidge gave his approval of the use of naval units to prevent the proposed seizure. The State Department, further, believed that the whole system of treaty rights for the maintenance of foreign trade would be endangered by the contemplated move of the Canton Government. The American Minister advocated a course of

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1. Foreign Relations, 1923, I, p. 552.

waiting out the threat of the Canton regime, hoping to force the Chinese people to unite against internal forces of disruption.<sup>1</sup> This course reiterated the appeal made by the American Government to the Chinese before China had declared war against the Central Powers. The United States had consistently desired political unity in China. The Department was adamant in its original stand in the matter of dealing with the customs surpluses only as trustees for the recognized government of China.

With its policy outlined, the United States joined the Powers in a naval demonstration to prevent the proposed seizure by Canton. The situation was awkward because of the complications involved. If the Powers took the Maritime Customs house, Sun Yat-Sen's group might make a counter move and declare Canton a free port. That would force the Powers to declare a blockade or give up the contest.

The diplomatic body at Peking informed the Government at Canton that the granting or refusal of their claim did not lie within the province of the power of the diplomatic body. The policy was determined by Treaty rights in 1901 whereby the Powers, ".... derive from that protocol the right to ensure the priority of the payment of interest

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1. Foreign Relations, 1923, I, p. 555.



and amortization of certain foreign loans secured on the customs revenues previous to 1901 and of payment of interest and amortization of the indemnity...."<sup>1</sup> Furthermore, by agreement between the diplomatic body and the Chinese Government January 30, 1912, the diplomatic body was given trusteeship of the Maritime Customs revenues to protect the Boxer obligations. Strictly defining the sphere of their power, the diplomats, by concerted action, refused the request of the Canton Government.

The Nationalist press reported that its Government would probably start anti-foreign agitation in answer to the naval demonstration.<sup>2</sup> It charged that the Powers were holding the large customs revenues that were needed by the Chinese to reduce taxes and the cost of living. The propaganda attacked the United States and expressed Chinese disappointment in finding the United States ready to use force with the other Powers. Sun Yat-Sen issued a manifesto to the American people complaining of the naval threat to Canton.

The Nationalists complemented publicity with action. Sun ordered the commissioner of customs to hold all customs

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1. Foreign Relations, 1923, I, p. 568.

2. Loc. Cit.

revenues at the disposal of the Canton Government, minus the surplus paid to foreign obligations. This willingness to uphold foreign obligations showed a sincere desire on the part of the Cantonese Government to win recognition from the Powers as the lawful government of China.

A few days after the Canton manifesto was issued, half of the British force withdrew from Canton. The American Minister noted this move as a possibility that Britain was weakening, and urged that she be persuaded to maintain collective solidarity on the most important matter that had come up since the Washington Conference. The British replied that they no longer considered the naval demonstration necessary, but desired arrangements for its renewal if the need should ever arise.<sup>1</sup> The United States re-avowed its intent to co-operate in the event of a similar emergency, also, but it denied that the demonstration was no longer necessary. However, shortly after this reply, the American force was withdrawn in accordance with Hughes' instructions that the naval unit could depart if Sun Yat-Sen's group did not carry out their threat to seize the Customs or attack the Customs house, and they did not. Although the danger

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1. Foreign Relations, 1924, I, p. 409.



of seizure flared again that year, the British Foreign Office learned that Sun Yat-Sen was threatening to seize only the "native" Canton customs, and for this action there would be no need for a naval demonstration by the Powers. The Powers succeeded in preventing the proposed seizure, but the results were unsatisfactory for the prestige of foreigners in China. The naval demonstration caused Canton to look to Russia for aid against foreign encroachment.

The Peking Government gained an immediate advantage over the United States in the matter of collecting certain internal taxes and succeeded in complicating the tariff situation which the Powers were planning to determine at the coming Tariff Conference. The Standard Oil Company of New York asked the State Department for support to secure an efficient system of taxation in China.<sup>1</sup> The complaint was made that certain provinces, deprived of likin on foreign imports, had placed a local tax almost equal to the amount paid for Customs transit passes and had given passes for further exemption in exchange.<sup>2</sup> Such a system defrauded the Central Government and undermined treaty provisions. The Department expressed sympathy for the Company but acknowledged

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1. Foreign Relations, 1924, I, p. 481.

2. Ibid., p. 579.

an inability to take action re likin because the Treaty of February 6, 1922 relating to Chinese Customs Tariff had not been ratified by all Powers. This was a local victory whereby the provinces profited at the expense of the Peking Government. Such lack of foresight would not help convince the foreign Powers of China's ability to determine her own tariff, much as it might hasten the special conference.

The Chinese Government proposed a preliminary conference to decide a tentative agenda for later proceedings.<sup>1</sup> The necessity for putting the surtax into operation was apparent to the Chinese in view of the drastic financial condition and the inability to pay foreign and domestic obligations. However, in view of chaos in China, the representatives of the signatory Powers advised examination of the financial status of China and the proposed use of the surtax.<sup>2</sup> They felt, moreover, that the Peking Government should present its plan for the abolition of likin. These stipulations were advised before a reply to the Chinese request was made. The American Minister feared that if the preliminary conference should fail, the weight of the Special Conference would be considerably decreased.<sup>3</sup> The

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1. Foreign Relations, 1924, I, p. 514.

2. Ibid., p. 515.

3. Ibid., 1924, I, p. 515.



Department concurred with the Minister because of the disregard of treaty rights by the provincial officials, the discriminatory railroad rates, and other instances of endangering American nationals and property.<sup>1</sup> The safest course, then, would be that based on definite treaty stipulations. The request for a preliminary conference was accordingly refused.

The Peking Government, on June 24, 1925, sent an identic note to the Powers, requesting a readjustment of treaty relations. Representatives of the Peking Foreign Office assured the American Charge that the purpose of the note was to proceed with the national aspirations of the Chinese and to neutralize radical propaganda which aimed at the cancellation of "unequal treaties."<sup>2</sup> Whatever its purposes, the note brought action from the Powers. Representatives of the signatory Powers of the Washington Conference in China suggested to their governments that the Special Tariff Conference and the Extraterritoriality Commission be convened as soon as China could re-establish order. Thus China took the initiative in forcing the Powers

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1. Foreign Relations, 1924, I, pp. 516-517.

2. Foreign Relations 1925, I, p. 765.

to carry out the promises of the Washington Treaty. The unknown factor was the extensive meaning behind the reestablishment of order in China.

Kellogg instructed the American Delegates to the Tariff Conference J. V. A. MacMurray and Silas Strawn that, "the Special Conference ought to go beyond the strict scope of its activities as defined in the Customs Treaty and enter into a discussion of the entire subject of the conventional tariff, even including proposals looking toward ultimate tariff autonomy."<sup>1</sup> Kellogg felt that the levying of a surtax was mandatory and should not be limited by the condition that China abolish likin.<sup>2</sup> He deviated from Hughes' suggestion that the question of Chinese finance best be excluded from the conference. For the political situation that prevailed made it advisable that the Conference should consider using surtax revenues to refund China's unsecured obligations.

In the instructions, his last concern was for the co-operative policy which he hoped could be maintained, but not at the risk of our taking sides for or against any other government represented at the Conference.<sup>3</sup> Thus Kellogg's

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1. Foreign Relations, 1925, I, p. 842.

2. Ibid., p. 845.

3. Ibid., p. 847.



policy can be interpreted as sympathetic to the Chinese. He gave evidence here, of wanting to co-operate with the Powers only on condition that we would not have to enter an agreement detrimental to Chinese Nationalist aims and ambitions.

In drafting a reply to the Chinese note, Kellogg wished to extend the scope of the Special Tariff Conference to revise the customs treaties "looking toward ultimate tariff autonomy."<sup>1</sup> The American Minister, MacMurray, suggested the unadvisability of using the phrase "tariff autonomy."<sup>2</sup> To him the entire temper of Chinese national expression had changed to one desiring repudiation of foreign obligations. For this psychological factor of China's feeling of inferiority should not be overlooked by foreign Powers who had treaty rights in China. The process, he thought, should be gradual relinquishment, and for this reason the United States should stay with the Powers in determining revision policy. Kellogg was firm in his expression that we were ready to consider the entire matter of treaty revision with the other Powers or alone.<sup>3</sup> However,

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1. Foreign Relations, 1925, I, p. 797.

2. Ibid., p. 798.

3. Ibid., p. 805.

he let MacMurray decide whether or not to include the phrase in the event of our sending a note to China concerning American policy.

MacMurray thus had freedom to act on the matter. His action was a statement of his opinion regarding the customs tariff.

....My Government sympathizes with the feeling of the Chinese Government that the tariff schedules attached to the various treaties between China and other Powers have become a severe handicap upon the ability of China to adjust its import tariffs to meet the domestic economic needs of the country....., and is furthermore willing either at that Conference or at a subsequent time to consider and discuss any reasonable proposal that may be made by the Chinese Government for a revision of the Treaties on the subject of the tariff....<sup>1</sup>

Thus MacMurray prevented his Government from stating that it was ready to take individual action on the question of the tariff and from recognizing China's right to tariff autonomy. The co-operative policy was maintained, and the civil strife in China was allowed to run its course without interference from foreign Powers.

As time for the Conference to meet drew near, Kellogg felt unprepared to say whether or not it would be wise for us to declare for unconditional surrender of tariffs

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1. Foreign Relations, 1925, I, p. 833.



and extraterritoriality. The possibility arose that we might be driven to such independent release if the other Powers refused to make reasonable concessions.<sup>1</sup> The Secretary of State was apparently keenly responsive to public opinion. A conference was held in Baltimore September 26, 1925 to discuss American Relations with China. A resolution was adopted to bring about independent action on the part of the United States concerning treaty revision.<sup>2</sup>

The Chinese Minister presented a provisional agenda to the Powers. Tariff autonomy and an interim surtax were the main topics for discussion, according to the Chinese desires. From its secondary position on the agenda, the abolition of likin was considered relatively unimportant. The representatives of the Conference Powers sent an identic telegram to their governments, recommending the modification of the Chinese proposals to emphasize the abolition of likin as a major consideration. The purpose of the modification was to make tariff autonomy a mere wish on the part of the Chinese Government and thus to separate likin from tariff autonomy.<sup>3</sup>

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1. Foreign Relations, 1925, I, p. 850.

2. H. K. Norton, "Washington and Peking", Asia, XXVI (August 1926), p. 716.

3. Foreign Relations, 1925, I, p. 853.

Kellogg, while preferring action without an agenda of any sort, nevertheless felt that it should be accepted to show the Powers' desire to co-operate rather than to dictate to the Chinese.<sup>1</sup> Here again, the Secretary was voicing his belief that China was entitled to such consideration among the Powers. Accordingly, he proposed a new tariff as a solution of the problem, which would embody a general tariff of most-favored-nation treatment for an interim period preparatory to the complete restoration of tariff autonomy.

Again MacMurray advised the Secretary of State that China did not expect tariff autonomy.<sup>2</sup> The core of the problem, rather, was the possibility of getting the Powers to agree to an interim surtax of <sup>five</sup> / percent instead of the two and a half percent as provided in the treaty.<sup>3</sup> It would be used as basis for a loan, the greater part of which would be given to funding the unsecured foreign and domestic debts, and the balance would be used for administrative functions.<sup>4</sup>

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1. Foreign Relations, 1925, I, p. 855.

2. Ibid., p. 857.

3. Loc. cit.

4. Loc. cit.



At the opening session of the Special Conference, the Chinese delegates laid strong emphasis on the importance of tariff autonomy for China's economic equality in the world.<sup>1</sup> The Chinese Government proposed tariff autonomy and abolition of likin as simultaneous measures to come into effect January 1, 1929.<sup>2</sup> In this proposal, provision was made for an interim surtax on luxuries.

Answering replies characterized the Powers' convictions regarding the tariff. The American Minister spoke for proceedings that would help the Chinese national aspirations to become realized.<sup>3</sup> He did not mention tariff autonomy, per se, although the national expression for it was well publicized. The French emphasized the necessity for financial rehabilitation of China.<sup>4</sup> The British evidenced a desire to remain within the scope outlined at Washington in 1922.<sup>5</sup> The Japanese gave outright support to the consideration of tariff autonomy.<sup>6</sup> However, the

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1. Foreign Relations, 1925, I, p. 861.

2. Ibid., p. 862.

3. Ibid., p. 863.

4. Loc. cit.

5. Loc. cit.

6. Ibid., p. 865.

sweeping statement of the Japanese Minister was qualified by his admitting that tariff autonomy was a goal to be reached only by successive stages.<sup>1</sup>

At a tariff autonomy committee meeting, China asked the Powers to concede the principle of autonomy with the abolition of likin. The United States reserved decision until further study of the plan to abolish likin and other taxes had been made. Dr. Wang answered for China by saying that the delay in abolishing likin was caused by the fact that likin was the main source of revenue for many of the provinces.<sup>2</sup> He suggested an investigation of the problems in the provinces to facilitate abolition. Compensation for likin would be necessary and could be paid by the Central Government from a portion of the increased customs revenue of the surtax.

Kellogg approved of the suggestion of the American delegation that, "The Chinese Government is so lacking in stability that there is great danger that this or a succeeding government may renounce the treaties unless we concede some of the demands."<sup>3</sup> For this reason it was decided to accept the Chinese proposal for the abolition of likin.

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1. Foreign Relations, 1925, I, p. 865.

2. Ibid., p. 873.

3. Ibid., p. 871.



However, an impasse was reached on the question of tariff autonomy. The Chinese delegation wanted the Conference to "declare recognition of China's right to enjoy tariff autonomy" upon the abolition of likin.<sup>1</sup> The Powers wanted China to accept their "intention to recommend to their respective Governments the immediate adoption of a treaty which shall recognize China's right to enjoy tariff autonomy."<sup>2</sup> The subcommittee on tariff autonomy recommended a resolution that was unanimously adopted by the Conference recognizing China's right to enjoy tariff autonomy and acknowledging her promise to abolish likin.

This resolution was exactly what China wanted. The next step would be to have it accepted by the Governments of the delegates. The Chinese got the impression from the ensuing diplomacy that the Powers admitted China's right to tariff autonomy but withheld legal recognition.<sup>3</sup> The Conference, it would seem, adopted the resolution as an expedient measure in the face of adverse propaganda urging the establishment of tariff autonomy, preferably through

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1. Foreign Relations, 1925, I, p. 879.

2. Loc. cit.

3. S. K. Hornbeck, China To-day: Political, (Boston, 1927), p. 464.

diplomacy, but, if necessary, by abrogating all customs treaties.

The Powers, however, held a superior position. The political and financial state of China was chaotic. When the Special Conference went into session early in 1926, the Powers were seriously concerned with the insecure position of the Central Government. That Government was asking for the two and one half percent surtax to become effective immediately and for unrestricted use of the revenue.<sup>1</sup> The American delegation opposed the political connotation of foreign support that might be granted to this Government. For Militarists were in control of Peking and they would probably use the increased revenue to wage war against the South. The South's objection to Peking control of the surtax was the same as its argument against the distribution of the customs surplus in 1923. Both Governments however were in drastic need of financial assistance.

The Americans proposed to carry on negotiations irrespective of disturbed conditions. The Chinese requested continuation of the conference, and the United States was willing to comply to please China and to live up to our

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1. Foreign Relations, 1926, I, p. 743



declared policy at Washington.

To abide by the terms of the Washington Conference, the American delegation wanted the Powers to co-operate on a general tariff policy. Therefore, if China should dis-integrate before the treaty was ratified, it would not be the fault of the Powers. Kellogg informed the British Government of our desire to continue negotiations, and expressed hope that the British would co-operate with the Conference to keep it in session.<sup>1</sup>

The American, British, and Japanese advisers drew up a draft protocol agreeing:

- (1) to levy surtaxes,
- (2) to collect them in Maritime Customs Administration and apply them to:
  - (a) abolition of likin,
  - (b) abolition of "coast trade duty",
  - (c) administrative need of government,
  - (d) liquidation of unsecured debts,
  - (e) deposit in specified banks.<sup>2</sup>

The governments of the representatives with the exception of Japan approved the protocol. The Japanese delegation

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1. Foreign Relations, 1926, I, p. 749.

2. Ibid., pp. 750-751.

maintained the desire of its government not to "implement the Washington surtaxes apart from the negotiation of the larger treaty which the Conference had under consideration," which included funding the unsecured debts.<sup>1</sup> They claimed willingness for a summer recess and readjournment September 30. MacMurray objected to the recess on the grounds that it violated the pledge given by the Powers to China,<sup>2</sup> but it went through.

While the Conference was adjourned, the Nationalist Government at Canton protested against resuming the Conference, on the grounds that it supported the militarists. The American Minister replied to Chen, Acting Minister of Foreign Affairs at Canton, that lack of unanimity in China denied the attempt of the Powers to give effect to treaty readjustment.<sup>2</sup> The communication was sent in the hope that it might serve a useful purpose if Chen did not accept it as material for propaganda.<sup>3</sup> Chen immediately outlined the Nationalist opinions to MacMurray:

The policy (of the United States) is wrong because it is an expression of American failure to realize that the Chinese situation is fundamentally a Revolutionary situation..... i.e. a fundamental

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1. Foreign Relations, 1926, I, p. 761.

2. Foreign Relations, 1926, I, p. 847.

3. Loc. cit.



solution is necessary as opposed to a solution involving a series of so called Revolutionary re-adjustments. And the situation is Revolutionary because the principle of change implicit in the Revolution of 1911-12 has not yet been worked out in the life of the Nation, particularly in its politico-economic aspect, owing to the constant interference and intervention, direct and indirect, of certain Foreign Powers who (to cite some single instances) first supported Yuan Shih-kai in his attempt to destroy the Chinese Republic and financed him with the Re-organization loan of 1913, next supported Tuan Chi-jui in his Anfu days (pro-Japanese) and financed him with the Nishiara and other loans, then supported Wu Pei-fu and financed him with Customs and Salt surpluses, and are now contemplating the support of a composite strong man in the diversified persons of Wu Pei-fu and Chang Tso-lin and the financing of this brace of militarists with the proceeds of a loan to be secured on the promised Tariff surtaxes.

.....Nationalist China insists on a fundamental solution of the group of issues known as the Chinese question. Internally, this means that the new military and political technique which has enabled the Nationalist Government to unify the Liang-Kuang militarily, fiscally and politically must be applied on a national scale in order that the Chinese people may work out their own salvation in the interests of themselves as a whole and not to subordinate the same to such alien interests as foreign high finance and foreign trade. And externally, the dominating feature of a fundamental solution of the Chinese question is that America should revise its present policy of "bringing into effect certain re-adjustments of its treaty relations with China" and, recognizing the necessity of a General Re-adjustment of such treaty relations, instead of re-adjustments on the instalment plan, satisfy the demand of Nationalist China for the substitution of the unequal treaties by other treaties consistent with the real independence and sovereignty of China. This is a policy that has been definitely brought within the range of practical politics and proved to be both practicable and expedient by the bold statesmanship of Soviet Russia.



.....As there is not such a government at the moment, I have the honour to repeat the warning that the Nationalist Government whose authority is now extending to Central China, will repudiate all and every loan to be concluded with agents of Wu Pei-fu and Chang Tso-lin in Peking, and to add that the resumption of the Special Conference will be viewed by my Government as a deliberate attempt on the part of the United States and other interested Powers to convert the Chinese Maritime Customs from a politico-fiscal organ into an engine of war-finance and foreign intervention in China's civil or other Revolutionary wars. In this event the Nationalist Government will be compelled to take certain defensive measures.<sup>1</sup>

The Peking Government was trying to force the Powers to reconvene the Conference by threatening to assume tariff autonomy. With both North and South threatening the Powers, MacMurray had acted independently and began negotiations with the Canton regime. He then explained his purpose to Kellogg who sanctioned it.

I regret that, under the necessity of taking immediate action to avert our being placed in false light of partisanship toward the military coalition now occupying capital, I was compelled to take a position in this delicate matter without the opportunity of obtaining your instructions; and my having done so may indeed result in diminishing chances that this Cabinet might obtain recognition either of our own or of other governments; and it must be realized that there is at present time no reasonable prospect nor any expectation among representative China of the formation in the immediately foreseeable future of a government commanding the general support of the country.....<sup>2</sup>

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1. Foreign Relations, 1926, I, pp. 851-853.

2. Ibid., pp. 848-849.



The American State Department had no desire to break with the Powers on the question of continuing the Conference. The best course to pursue in accordance with the Washington Treaty would be action by the Powers to enforce surtaxes on their own nationals independent of China.<sup>1</sup> The British indicated willingness to follow along these lines without consideration of likin or debt consolidation.<sup>2</sup>

C. P. Howland in his study of the diplomacy of this period found a general parallel between the British and American policies on the matter of co-operating for the benefit of China. However, he found that the United States was always just a little behind Great Britain in its liberality toward Chinese national aspiration.<sup>3</sup> He described the British attitude as a natural aspect of their position in China which was the initiator of the treaty system, leading trader hurt by Chinese boycotts, and Power most closely associated with the Shanghai massacre.<sup>4</sup>

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1. Foreign Relations, 1926, I, p. 859.

2. Ibid., p. 863.

3. C. P. Howland, Survey of American Foreign Relations, (New Haven, 1930), p. 155.

4. Loc. cit.

During the fall the Powers agreed that there were no delegates qualified to represent China at the Conference and consequently the Special Conference was no longer to be regarded as in session. R. T. Pollard concluded that the Conference failed partly because the Peking Government was ineffective as a central organ for exchange between China and the Powers and partly because of disagreement among the Powers over disposition of the<sup>1</sup> surtax.

When the Conference failed, the Powers had to meet the situation of China's imposing taxes that were contrary to treaty provisions. The Canton Government informed the Powers that it intended to levy consumption and production taxes on all merchandise passing through the Maritime Customs of the port. The proceeds of the revenue were to be used to pay strikers in the anti-British boycott. The Department saw no need for discussing the matter of imposition with the British or Japanese or for planning for a naval demonstration. The first step was to inform the authorities at Canton of our concern for the violation of existing treaties, following procedure of past protests.

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1. R. T. Pollard, China's Foreign Relations, p. 280.



The diplomatic body looked upon the imposition of the Canton taxes as the beginning of the end of treaty rights in China. It drew up a draft protest to which the United States gave adherence. This policy of local protest was applied by the American Consuls at Tsingtan and Tsinan against a "goods tax of 2 percent ad valorem imported into Shantung Province." Chen informed the Consul at Canton that his Government wished to follow closely the Tariff Conference schedules of new taxes.<sup>1</sup> He asked for a list of luxuries and for the minutes of the Conference meetings, but the Minister denied his request, awaiting determination of Department policy. The United States would not conciliate Canton on minor matters before a tariff treaty had been concluded.

In October the British Minister in conversation with American Charge Mayer let it be known that his Government would acquiesce to the new taxation if it were placed under the Maritime Customs Administration.<sup>2</sup> The British desired, however, an exchange of views with the American and Japanese Departments before taking action. The American State

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1. Foreign Relations, 1926, I, p. 881.

2. Ibid., p. 888.

Department held to its original stand that taxes violating treaty rights should be protested. The collecting agent i.e. Chinese Customs or opposing factions of the Nationalist Government was to have no influence on our attitude.

The American Minister warned his Government of the importance of time in determining our policy. He received authorization on December 13 to negotiate with Britain and Japan, "to declare that the Washington surtaxes would be applicable to their nationals on condition that the Maritime Customs collect the taxes and the revenues go to the authorities in control.<sup>1</sup> The United States had a dual policy, co-operating with the Powers and having intercourse with the Nationalist regime. Kellogg supported the co-operative policy concerning application of the surtax in spite of his doubting the wisdom of it. America stayed with the Powers in formulating a tariff policy to the limit of its conviction, although its sympathies were with the moderate nationalists by the end of 1926.

The British Charge announced to the Chiefs of Missions in China on December 18 that the British Government wanted the Powers to grant the Washington surtaxes immediately

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1. Foreign Relations, 1926, I, p. 912.



and recognize China's "right to enjoy tariff autonomy as soon as she herself has settled and promulgated a new national tariff, .... and while calling upon China to maintain that respect for the sanctity of treaties which is the primary obligation common to all civilized states, .... recognize both the essential justice of China's claim for treaty revision and the difficulty in present conditions of negotiating new treaties in the place of old, .... modify their traditional attitude of a rigid insistence on the strict letter of treaty rights."<sup>1</sup>

The public concluded from this statement that Great Britain was taking a more liberal lead toward China than the other Powers. MacMurray criticized the British attitude as conciliatory.<sup>2</sup> It merely invited complete repudiation of all obligations. However, these radical concessions by Great Britain, leading trader in China, would perforce commit the United States to an equally liberal policy to maintain co-operation among Powers.

Accordingly, the State Department gave full support to the British statement. Kellogg desired a reciprocal

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1. Foreign Relations, 1926, I, p. 918.

2. Ibid., p. 920.

most-favored-nation treatment with China as soon as treaty controls were relinquished. The Secretary of State announced his intention of being willing to negotiate revision with China to abolish extraterritoriality and tariff control in the near future. The British promise had acted as stimulus for American action, individual action. Early in January, 1927, Kellogg clarified his policy by professing hope that the United States would be a moral influence for a united China. And he asserted that if unity could come about, we would then be willing to make concessions to China on the Washington Conference Treaties.<sup>1</sup> This statement left the decision of introducing negotiations up to both of the Chinese Governments.

Dr. Koo, of the new Peking Cabinet, presented three demands to the Powers: tariff law autonomy to be effective January 1, 1929; application of Washington surtaxes to be levied February 1, through the Maritime Customs and resumption of the Special Conference; and new revenues applied to a sinking fund for abolition of likin and for the funding of the unsecured debt for administrative purposes.<sup>2</sup>

American policy of moral leadership was difficult to maintain, for both the North and South had broken away

1. Foreign Relations, 1926, I, p. 937.

2. Ibid., 1927, II, pp. 372-373.



from "old treaties" as well as from the Washington Conference Treaty. Kwangtung established a provincial tax in addition to import duties, surtaxes and likin; Mukden declared the system of exemption certificates inapplicable, for the whole of Manchuria and Shantung had its "good tax." Protests seemed futile, but the Department instructed the Consulates to be alert for discriminatory treatment of American citizens by de facto officials.<sup>1</sup>

The Nationalist Government imposed a stamp tax which the American Government upheld because it was not discriminatory, for it was levied against Chinese as well as foreigners. Nor did the Department support the complaint by wine and tobacco merchants against the tax imposed on these articles. The Government refused to observe that arrangements made between the Chinese administration and private American companies were a basis for protest against national tax policies. The State Department was judiciously and impartially trying to extend the promises made to China in 1922. In regard to a luxury tax, in some ports, the Department acquiesced tacitly in the belief that it was a collection equivalent of the Washington surtaxes.

The Nationalist Government announced three laws to

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1. Foreign Relations, 1927, II, p. 383.

become effective on September 1st.:

- (a) the law on abolition of internal transit dues,
- (b) provisional law on national import tariff,
- (c) Law on excise duty.<sup>1</sup>

As with the Peking arbitrary action, the American Government withheld reply to the demands, considering them a contravention of treaty rights. Apparently both Peking and Canton were using the same arbitrary methods to see if the Powers would accede. The United States refused. Her offer of moral leadership did not countenance/<sup>treaty</sup>abrogation. The Nanking Government decided, "in view of existing circumstances, to temporarily postpone the enforcement of 'the three proposed laws'."<sup>2</sup> Both Peking and Nanking stopped short of drastic measures that would sever diplomatic connections completely.

A resolution was introduced to the House of Representatives on January 4, 1927, requesting that the President undertake negotiations with China to render the treaty relations between the nations equal and reciprocal.<sup>3</sup>

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1. Foreign Relations, 1927, II, p. 400.

2. Ibid., p. 407.

3. Ibid., p. LV.



In the main, the resolution paralleled the policy that the State Department had been ardously following.<sup>1</sup>

Representatives from the Nationalist Government called at Washington to discuss the possibility of negotiating in regard to treaty revision on the basis of Kellogg's statement of January 27.<sup>2</sup> The Nationalist representatives expressed a strong desire on the part of their government to have the support of the United States in view of the impending break with Soviet Russia.<sup>3</sup> The Peking and Nanking factions were willing to appoint a joint Commission to discuss treaty revision with the United States. Kellogg expressed willingness to act with them in the hope that our participating would lead to a union between the North and South and thus end the Civil War. Such action was similar to our hopes that Washington Conference policies would help China unite. Actually unification was taking place through force and this proposal of Kellogg's was superfluous. Here again, he was combining the two problems of tariff autonomy and extraterritoriality. MacKurray

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1. Congressional Record, LXVIII, pt. 4, p. 4386.

2. Foreign Relations, 1927, II, p. 366.

3. Ibid., p. 367.

demurred for such a course was contrary to the policy he had begun, which contemplated negotiations with the several regimes in China, solely on the question of tariff restrictions. Tariff autonomy was to be the immediate compensation for the establishment of a representative government.

The Nationalist forces took Peking in June 1928 and united China under the government at Nanking.<sup>1</sup> The United States was the first foreign nation to give de jure recognition to the Nanking Government. MacMurray's policy was immediately carried out. A treaty regulating tariff regulations between the United States and China was signed at Peiping July 25. The use of the name Peiping was the first treaty recognition of the Nationalist name for Peking.

The question of tariff autonomy lay primarily in the political sphere of the tariff problem. The heritage of treaty stipulation and international co-operation had been too firmly implanted as Far Eastern Policy for the United States to give adherence to the Chinese demand for autonomy in 1922. The proposed Special Conference decided upon at Washington was merely a component part of declared policy in

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1. W. C. Dennis, "The Treaty Regulating Tariff Relations Between the United States and China." American Journal of International Law, XXII (October 1928), 834.



1903 to implement surtaxes granted as compensation for the abolition of likin.

The turning point of the American policy was brought by the matter of applying these surtaxes. In November 1926 the United States was willing to comply with the other Powers to have the surtaxes imposed and collected by the Maritime Customs Administration. That December, the British published the note that suggested appeasement to Peking and individual action. This action gave the United States the freedom to depart on its own policy declared by Kellogg early in 1927. This was definite departure from co-operation with the Powers, and it was followed by a period of awaiting developments between the Chinese Governments.

As the Canton Minister, Chen, had said to MacMurray, our policy has been evolutionary in the face of a revolutionary situation.<sup>1</sup> In 1923 the Canton Government had threatened to seize the Customs to derive its share of the surplus. It is interesting to note that the Powers answered this threat with a naval demonstration that proved effective. By 1926 the co-operative policy had been weakened to the extent that both Chinese Governments imposed taxes contravenous to treaty

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1. Vide note 1, p. 22.

rights, and the Powers were forced to accede because they would not unite for forceful prevention.

Every year that the Tariff Conference was delayed, the Powers lost strength as a co-operative force against national expression in China. Such weakness caused Peking to ask for a Preliminary Conference in 1924 to apply the sur-tax and thus relieve the financial situation. This request was refused, but the refusal was ~~not~~ powerful enough to defeat the main purpose of the Chinese. For when China suggested treaty revision in her note of June 1925, the Powers felt the need for hastening the Tariff Conference and the Extraterritoriality Commission.

The United States realized that the scope of the Customs Treaty of 1922 was inadequate in 1925. Kellogg gave evidence of our willingness to grant tariff autonomy as soon as possible. The Secretary of State and the American public were anxious to recognize Nationalist China and conclude a most-favored-nation treaty of equality and reciprocity with her.

After Kellogg's statement of moral leadership to a stable representative government of China, the United States had to pursue a judicious policy. The refusal of the United States to acknowledge Chang Tso-lin's (Peking) tariff demands in 1927 can be interpreted as an indication of our



pro-Nationalist sentiment. However, the United States brought equal pressure of disapproval against similar tactics by the Canton Government that same year.

MacMurray was responsible for preventing Kellogg from trying to bring about rapprochement between the North and South over general treaty revision. This action was the first immediate step toward diplomatic victory for the moderate Nationalists. The United States had one highly desired bargaining measure, the grant of tariff autonomy. Skillful diplomacy used it to the best advantage.

## CHAPTER III.

## EXTRATERRITORIALITY

At the Sixth Meeting of the Committee on Pacific and Far Eastern Questions at the Washington Conference, Dr. Wang of the Chinese delegation presented his country's views on extraterritoriality.<sup>1</sup> There were now fifty ports in which foreign nationals possessed the right of extraterritoriality, where the original number had been five.<sup>2</sup> This meant a great increase in the number of people residing in China over whom China had no control. The matter was an, "impairment of the territorial and administrative integrity of China," and an immediate solution was imperative.<sup>3</sup> In addition to the national humiliation that she suffered, China had to acknowledge a multiple system of courts and the attendant confusion arising thereby. Consular courts were often too far from the scene wherein the case originated to make disposal of justice effective. Foreigners frequently claimed immunity from local taxes under extraterritorial exemption. These were some of the

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1. "Conference on the Limitation of Armament," Senate Document, vol. X, 67th Cong., 2d. Sess. (Washington, 1922), p. 475.

2. Loc. cit.

3. Loc. cit.



chief objections China had against the extraterritorial system..China did not desire complete abolition but asked the powers to co-operate in taking measures toward eventual abolition based on the promise made by Great Britain, the United States, and Japan in 1902 and 1903.<sup>1</sup>

Accordingly draft resolutions were presented to the Conference concerning the problem of extra-territoriality and providing for a commission of the Nine Powers represented to investigate the practise of extra-territoriality and Chinese jurisdiction within three months after adjournment.<sup>2</sup>

Two months after the Washington Conference the Chinese Government asked for a postponement of the proposed meeting. They wanted time to assemble necessary technical information to facilitate commission proceedings when it did meet. The United States heartily supported this request and it was accordingly granted.

The United States was willing to fulfill the terms of the Washington Treaty at the earliest possible moment. Hughes instructed his Minister in China to discuss the proposed commission with his colleagues. He then

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1. "Conference on the Limitation of Armament," Senate Document, vol. X, 67th Cong., 2d. Sess. (Washington, 1922), p. 477.

2. Ibid., p. 514.

suggested lines of general investigation of the many legal complications that caused friction between treaty powers and China.

1. All foreign courts, laws and procedure existing by virtue of treaty provision or custom.
2. All Chinese Courts hearing mixed cases, including the special courts such as the international Mixed Courts at Shanghai and Amoy.
3. Chinese law and legal procedure.
4. China's judiciary.
5. The extent to which China has actually respected treaty stipulations relative to extraterritoriality.
6. China's present political condition in its bearing on the legal and judicial systems, with particular reference to the possibility of interference with the course of justice by civil or military authorities.
7. The status of non-treaty power nationals such as Russians, Germans, and Austrians.
8. The status of persons of Chinese race who acquire foreign nationality and remain or return to Chinese soil.
9. Extradition and the right of asylum in the <sup>1</sup> Settlement, Concession, and Legation areas.

Hughes position supported the general contention of other Powers holding extraterritorial privileges in China who were not encouraged to relinquish them when they witnessed

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1. Foreign Relations, 1923, I, p. 620.



the dissatisfaction among nationals of Powers who had withdrawn the grant. The merchants and business men of Austria and Germany had soon found protection from Chinese jurisdiction by incorporating their interest with American or British firms. Soviet Russia had withdrawn extra-territoriality in China in 1919 with other cancellations of special privileges to foster good will toward Communism in China. There were two or three thousand Russians in China thereby placed in the position of non-treaty power foreigners without extraterritorial rights.<sup>1</sup> The results were not satisfactory. Confusion and legal misunderstandings arose to such an extent that treaty Powers would not be inclined to think of relinquishing their rights.

From the example of these non-treaty Powers, it would seem that the other Powers were not selfishly denying China a sovereign right. The danger to foreigners during the turbulent period after the War was active enough to cause their Governments to unanimously agree to maintain the extraterritorial privileges.

The Chinese Government announced readiness to have the Commission meet November 1, 1923. The representatives of the signatory Powers in Peking with the exception of the

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1. H. B. Morse and H. F. MacNair, Far Eastern International Relations. (Cambridge, 1931), p. 672.

United States were against convening the commission in the light of existing conditions. For during this year foreigners in China were worried about the resumption of war in Northern China. In time of Civil War treaty nationals felt the importance of their extraterritorial protection more than ever before. However, it has been suggested that the foreigners wished protection more against the hostile attitude of the Chinese than against the Chinese laws themselves.<sup>1</sup>

Hughes agreed with the seriousness of the situation but expressed the hope that an early meeting of the Commission would emphasize the political abuse in China and thus force the Chinese to correct it as the first step in ridding themselves of the obnoxious treaty privileges.

....from the viewpoint that this Government is concerned not to champion the Chinese claim to immediate relief from the burden of extraterritoriality, but to pursue the course which will best tend to bring about conditions of order and stability and enable China to fulfill the obligations as well as to claim the prerogatives of a sovereign state.....<sup>2</sup>

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1. H. S. Quigley, "Extraterritoriality in China", American Journal of International Law, XX (January, 1926), p. 67.
  2. Foreign Relations, 1923, I, p. 622.



The legal life of the Peking Government had died by September 1923 because Parliament had neglected to elect a President as stipulated in the Permanent Constitution.<sup>1</sup> The American Minister then advised Hughes to accept postponement of the proposed commission. The Secretary of State agreed, for he realized that unanimous approval of the Powers would be necessary for the success of the Commission and the present conditions in China would not encourage the Powers to give their consent. He advanced a proposal, however, accepted by the majority that a time limit should be put upon the postponement, November 1, 1924. It was impossible to gain unanimity on this point either and Hughes then warned the American Minister in China to inform the Chinese Foreign Office of the failure, but not to give, "any intimation as to the attitude taken by the individual Powers concerned toward the meeting of the Commission."<sup>2</sup> Such action was diplomatic insurance for the co-operative policy. Hughes' policy had been succinctly declared but thus far without success.

Repeatedly throughout 1924 the Department of State endeavored to persuade France to break the deadlock

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1. Foreign Relations, 1923, I, p. 622.

2. Ibid., pp. 630-631.

of international opposition to China by concluding a settlement in regard to the payment in gold of the French share of the Boxer indemnity.<sup>1</sup> Hughes was firmly convinced that pressure by the Powers on the Chinese Government would not restore satisfaction to either side. Therefore, it was the French obligation to settle the affair. The "gold franc" dispute was the most serious controversy after the Washington Conference.<sup>2</sup> America, Great Britain, and Japan had little interest in the case because they were not affected financially, but they maintained a "solid front" in co-operation against China by not forcing France to settle the affair.<sup>3</sup>

The delay in ratifying the Washington Treaty prevented definite action from being taken re extra-territoriality during the years 1922-1925. The Chinese were becoming increasingly anti-foreign, staging labor and student demonstrations against imperialistic capitalism. Propaganda against the Peking regime was successful because it was not suppressed. The weak Peking Government, however, managed to settle the gold franc dispute with France in

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1. Foreign Relations, 1924, I, pp. 425-426.

2. H. H. Gowen and J. W. Hall, An Outline History of China, (New York, 1927), p. 451.

3. Loc. cit.



1925 and thus the Washington Treaty went into effect. In the face of domestic turmoil and international pressure Peking also managed to send a note to the Powers June 24, 1925, demanding treaty revision. Repercussions were immediate and indicative of a coming change in Chinese relations with the Powers.

Concerning extraterritoriality, Kellogg wanted to reply that the United States was willing to send commissioners to investigate the problem with a view toward relinquishing the privileges as soon as possible. China looked to the United States to hasten the Powers into agreement on the proposed commission. Apparently the Chinese were not as determined about extraterritoriality as they were about tariff autonomy, for the Peking Minister stated that his government did not expect the Extraterritorial Commission to do more than make a report that would not constitute a binding promise of release to China from the Powers.<sup>1</sup> Tariff autonomy and extraterritoriality were part of the more comprehensive aspect of foreign control in China.<sup>2</sup> Events were taking place, however, that would convince the Powers of the necessity for specific action regarding the administrative problems of treaty revision.

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1. H. H. Gowen and J. W. Hall, An Outline History of China, p. 447.

2. Ibid., p. 773.

After the labor troubles associated with the Shanghai incident, Japan made every effort to bring co-operation among the British, American, and Japanese to settle the affair and other aspects concerning China. Japan favored granting the Nationalist aims for treaty revision to enable China to build a stable government. The Japanese position in Manchuria was believed to be vital to her existence as a nation. In regard to these last two beliefs the Japanese diplomacy was contradictory. Japan wanted a sovereign China except where Japan established her own interests. The American State Department interpreted the Japanese overture for co-operation as either a decision to remain with the Western Powers or as fear that the United States would assume the lead in granting concessions to China and thereby threaten Japanese influence in Peking.<sup>1</sup>

The British were inclined to favor holding the Tariff Conference because they felt its scope would of necessity be broadened to include the question of extra-territiriality, whereas simultaneous meetings would probably confuse the Chinese.<sup>2</sup> The British, for the most part, were in general agreement with the United States

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1. Foreign Relations, 1925, I, p. 769.

2. Ibid., p. 774.



concerning treaty revision. They would not, however, define the work of the Extraterritoriality Commission as finely as did the United States.

President Coolidge instructed the State Department to judge the matter of an Extraterritoriality Commission carefully, but to co-operate with the Powers as far as possible to prevent the Chinese from seeing a division in accord.<sup>1</sup> This was confirmation of Hughes' policy.

Kellogg informed Britain and Japan that he believed that only rigid adherence to the Washington Conference obligations would solve the problem of "growing national unrest in China."<sup>2</sup> The Department was inclined to believe that China's internal chaos was only a partial answer to the postponement and delay of the Extraterritoriality Commission. Its erroneous supposition was that conditions in China in 1925 merely differed in degree from those in 1922. For this reason, the Washington Conference commitments would be suitable. Kellogg felt that the replies of the Powers should be sent to the Chinese Government as soon as possible and should form the basis of a statement for publication.<sup>3</sup>

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1. Foreign Relations, 1925, I, p. 778.

2. Ibid., p. 780.

3. Ibid., p. 783.

MacMurray then began to warn the Department about the attendant danger of too close co-operation with Japan and Great Britain. He feared that the emphasis Japan placed upon the differentiation between Manchuria and China proper was a forerunner of an understanding parallel to the Lansing-Ishii agreement or the Anglo-Japanese Alliance.<sup>1</sup> Our position was thereby made especially delicate because China was awaiting our reaction to her anti-British and anti-Japanese labor demonstrations.

The United States expressed itself in agreement with Great Britain that the reply of the diplomatic body at Peking, "should embody an emphatic statement that there can be no discussion of particular reforms, much less a review by the Powers of their treaty relations with China until the Chinese Government have given evidence of their ability and willingness to suppress disorders and to enforce respect for the safety of foreign lives and property and put an end to strikes and agitations which are harmful to Chinese and foreign commercial interests...."<sup>2</sup> Although as a matter of practical policy, the United States did not believe that the complete restoration of order should be required for discussing treaty relations.<sup>3</sup> In the course of

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1. Foreign Relations, 1925, I, p. 787.

2. Ibid., p. 793.

3. Loc. cit.



events, the practical policy was to become dominant.

MacMurray analyzed conditions in China relating to the present situation. The movement seemed to him to be national, motivated from within rather than from Russian incitement.<sup>1</sup> His separating pure Nationalism from the prevailing Communistic influence pointed the way to the later American policy of supporting the moderate Nationalists. He informed Kellogg that the Chinese radicals were opposed to taking part in the Special Conference or the Extra-territoriality Commission because such measures were further recognition of the right of foreign Powers to dictate to China. The less radical trend of thought represented at Peking maintained that the desire for treaty revision was largely a political catchphrase. The Peking Government suggested a new conference to consider the question of treaty revision more to gain prestige for their regime than to urge the Powers to make concessions to China.<sup>2</sup> The Minister of Foreign Affairs for Peking stated that there were many Chinese reluctant to chance a loss of foreign trade and to experience probable administrative chaos that might result when tariff autonomy was granted and extra-territoriality was abolished. The increasing strength of

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1. Foreign Relations, 1925, I, p. 799.

2. Ibid., p. 801.

the "Rights Recovery Movement" left the Minister's statement open to question.

The Powers sent an identic reply to the Chinese requests warily providing for the convention of the Extraterritorial Commission. No binding commitment was made in this note because of the generality in the wording, "what, if any, steps...."

....The Establishment of the courts and the enactment of laws, however, do not in themselves meet all the requirements of the situation. Courts cannot function and develop properly or consistently without the aid of a stable Government....and the most feasible way in which the question can be approached and considered is to send to China the Commission provided for in Resolution V of the Washington Conference,....what, if any, steps may be taken with a view to the<sup>1</sup> relinquishment of extraterritorial rights.

The first meeting of the Commission was scheduled for January 12, 1926. Delay had been caused by the disturbed political conditions, cessation of railway communication, and Chinese insistence of nominal chairmanship of the Commission. The Chinese Foreign Office had also asked Kellogg to give the American delegates plenipotentiary powers to conclude definite agreements. Such power would thereby give China a tactical advantage in making permanent

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1. Foreign Relations, 1925, I, p. 833.



adjustments while general deliberation was in process. The Secretary of State refused this request, stating that definitive power would not be accorded until the Commission had reported to the Government of the United States.

The Chinese Commission submitted a plan for consideration. China was determined to motivate the course of proceedings as much as she was able.

(1) Consular jurisdiction; (2) trial of mixed cases between Chinese and foreigners having extraterritorial rights; (3) trial of cases between foreigners having extraterritorial rights and (a) foreigners having no extraterritorial rights, (b) foreigners of countries having treaty relations with China; (4) mixed courts; (5) quasi right of asylum in premises occupied by foreigners and on foreign ships; (6) issue of foreign nationality certificates to Chinese citizens; (7) claim of foreigners to exemption from taxation; and (8) special areas (a) foreign settlements, (b) leased territory, <sup>1</sup> (c) Legation Quarter, Peking, (d) railway zones.

Although some of the delegates objected to a few of the proposals in the list, pertaining to taxation (7) and special areas (8), Kellogg instructed the American delegates to put no obstacle in the way of China's presenting views or data for consideration.

The Commission delegates presented their Governments

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1. Foreign Relations, 1926, I, pp. 970-971.

with full reports of their work on September 16, 1926.

The American Department of State published the full report that same November. China had wanted the first three parts of the report kept from general publication because of misapprehensions that might arise from the findings of the Commission, but the Powers denied this request. The report was divided into four parts:

- Part I. Present practise of extraterritoriality
- Part II. Laws and judicial and prison systems of China
- Part III. Administration of Justice in China
- Part IV. Recommendations.<sup>2</sup>

The Commission, in making a general observation on extraterritoriality, admitted that the present conception was unfavorable. The system represented the conflict between a growing Nationalistic spirit and expanding foreign interests. Thus the limitations on China's sovereign rights were stressed.

A study was made of the three Constitutions of the Chinese Republic, examining provisions for the rights of citizens and the guarantees of independent judiciaries to evaluate the laws which derived their validity from the

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1. Foreign Relations, 1926, I, p. 983.

2. "Report of the Commission on Extraterritoriality in China," United States Department of State (Washington, 1926), p. 5.



Constitutions.<sup>1</sup>

China was commended in the Report for general principles of judicial reform that had been instigated to carry out the provisions of the 1902 and 1903 treaties. The results were discernable in a modern system of courts with procedural and substantive law. However, the Commission discovered important discrepancies in the modern legal system. For a number of ancient laws and legal principles continued in force, and negligent enforcement of new laws restricted their application. It was found that some provisions of the law in connection with personal law, i.e. concubinage and bonding of children, and the extensive power of the magistrates, were still in existence.<sup>2</sup> There were eighteen hundred magistrates' courts in China compared with one hundred and fifty modern courts.<sup>3</sup> The greater part of Chinese litigation was carried on in these ancient courts. Few of the presiding officials in magistrates' courts were legally trained. The right of legal counsel was often denied and detention in civil cases was frequently allowed

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1. "Report of the Commission on Extraterritoriality in China," United States Department of State (Washington, 1926), p. 30.

2. Ibid., p. 53.

3. Ibid., p. 68.

in these courts. Military and naval courts had jurisdiction over all cases in which servicemen and civilian plaintiffs were involved. In time of emergency they had jurisdiction over all cases, held trial in camera, denied legal counsel, and permitted corporal punishment up to six-hundred blows of the bamboo.<sup>1</sup> The wide scope of martial jurisdiction, in view of the prevailing civil strife, offered convincing evidence for the general feeling among foreigners that they needed the security of extraterritoriality. The Commission listed a number of cases to show that the military authorities were arbitrarily arresting and condemning civilians while the Commission was in session.<sup>2</sup>

Furthermore the delegates were unable to report on the administration of justice in police tribunals, magistrates' courts, and military courts because of their inability to examine them. The Peking authorities refused to allow the investigation of these tribunals because they were listed under the Ministry of Interior and thereby beyond the scope of the Commissioners' inquiries. The

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1. "Report of the Commission on Extraterritoriality in China," Department of State, (Washington 1926), p. 82.

2. Ibid., p. 96.



Canton Government was stronger in its refusal. It would not receive the investigating committee on the grounds that extraterritoriality should be immediately abolished.<sup>1</sup>

The report concluded that it was, "well within the range of moderation to state that in China at the present time there is no effective security against arbitrary action by the military authorities....., in so far as such security can be afforded by an effective functioning of the Chinese civil and judicial authorities."<sup>2</sup>

Having completed its investigation, the Commission presented recommendations to China and to the Powers holding extraterritorial privileges in China. China was advised to adopt specific measures that would lead to the improvement of her judicial system. The Powers were encouraged to help China reform the judiciary along the lines determined by the Commission and to make feasible modifications in the extraterritoriality system.

The Commission definitely decided against the relinquishment of extraterritoriality per se. However, a stimulus for the gradual relinquishment acknowledged in

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1. "America and the Chinese Conflict," Congressional Digest 1927-1928, VI, VII (May, 1927), 150.

2. "Report of the Commission of Extraterritoriality in China," United States Department of State (Washington, 1926), p.97.

1903 and 1922 was produced by the recommendations in the report. R. T. Pollard has suggested that the recommendations were a defeat for China on the entire question of extra-territoriality. For even if the Powers accepted the recommendations of the Commission, they still retained the right of determining if and when these reforms had actually been carried out.<sup>1</sup> The report, then, became what Peking had expected, a review of the judicial system in China.

Meanwhile another aspect<sup>of</sup> judicial control was being enacted by China and the Powers. Because of the degree of foreign control, it was logical to associate Mixed Courts in China with Extraterritoriality.<sup>2</sup> The Powers had violated a treaty right when they seized the Shanghai International Mixed Court in 1911.<sup>3</sup> Prior to 1911, foreign and Chinese magistrates on the Court had been appointed by Chinese authorities, the Shanghai taotai. The action by the Powers could not be justified legally, but they maintained that the seizure had been to insure administrative efficiency during the Revolution. However, foreign control was not surrendered when the Republic was established.

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1. R. T. Pollard, China's Foreign Relations, (New York, 1933), p. 287.
  2. H. S. Quigley, "Extraterritoriality in China," p. 55.
  3. S. S. Liu, Extraterritoriality: Its Rise and Decline, (New York, 1925), p. 226.



The Chinese Government had asked the Powers to return the Shanghai Mixed Court to its control in 1922. Reply by the diplomatic body had been postponed because of the impending convocation of the Extraterritoriality Commission for it was hoped that this body would decide the issue. Before the Commission met, it was evident that the representatives of the Powers were anxious for the Court to be returned to the Chinese. Though China had taken the initiative in asking for return, the Powers favored the grant because foreign control had become a basic cause for resentment in China and the legal position of the Court was isolated. Foreign administration had become ineffective because the Court's decisions were not recognized anywhere else in China.

Hughes warned against a concession re the Mixed Court that might give the impression of being the first step toward the abolition of extraterritoriality.<sup>1</sup> However, Japan and Great Britain had taken a conciliatory attitude toward rendering the Court to the Chinese and the American State Department, unwilling to take individual action in the matter, had agreed to begin negotiations along those lines.

The Powers reached an agreement to return the

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1. Foreign Relations, 1924, I, p. 524.

Shanghai Mixed Court to the Kiangsu Provincial Government in 1926. The State Department maintained that the jurisdiction of the Court was not a treaty right, but had been determined by an agreement among officials of Great Britain, China, and the United States in 1869.<sup>1</sup>

Negotiation throughout the years had ended in stalemate because the Chinese insisted that the reconstituted court be entirely Chinese, while the foreigners wanted it to function with the administration of the International Settlement. By July, however, both sides agreed upon terms of rendition and secured the approval of the foreign legations.

(a) In place of the Mixed Court in the International Settlement, Kiangsu Provincial Government will establish Shanghai Provisional Court having similar jurisdiction. (b) Chinese laws and procedure will be applied except as the latter shall be modified by mutual agreement. (c) Assessors to be known as consuls' deputies shall function in all cases required by treaty and in criminal cases 'which directly affect the peace and order of the International Settlement. The Powers of the assessors to be in effect those conferred by the treaty of 1880. (d) Municipal police shall be detailed to functions as judicial police under orders of the court. (e) Appeals in Mixed Court civil cases shall be to Commissioner for foreign Affairs and the consul concerned...., (f) All judges to be

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1. Foreign Relations, 1926, I, p. 1028.



appointed by Kiangsu Provincial Government.  
 (g) Provision for a final settlement may<sup>1</sup>  
 be made with any Power three years hence.

In the ensuing diplomatic struggle for treaty revision, extraterritoriality assumed a misconstrued importance.<sup>2</sup> It was associated with tariff autonomy, to the detriment of the latter. MacMurray saw through the combination and was then able to enact a precise American policy.

Of the two matters that of extraterritoriality is ruled out by the fact that the Chinese have not yet such laws or judicial organization as would enable them to assume the function of dispensing justice where foreigners are defendants. It is therefore premature to consider the abandonment of extraterritoriality; and in view of the importance with which that subject has artificially been made to assume as a political slogan among the Chinese it would be dangerous to broach the subject in any way at this time.<sup>3</sup>

However, though the abolition of extraterritoriality was denied, the United States acted in accordance with the spirit of the Commission's recommendations and granted a legal right to China. The Nationalist Government had

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1. Foreign Relations, 1926, I, pp. 1031-1032.

2. Foreign Relations, 1927, II, p. 364.

3. Ibid., p. 364.

objected to the presence of consular representatives at trials in Chinese Courts.<sup>1</sup> The United States considered the protest at once, advised other Powers of its action and forthwith acquiesced:

....with a view of carrying out the provisions of the first sentence of section 2 of article 4 of the recommendations contained in the report of the Commission on Extraterritoriality in China, purpose (except in unusual circumstances) to exercise the right granted by article 4 of the Sino-American commercial treaty of 1880 insofar as relates to an American official watching proceedings,....in cases brought by American plaintiffs against Chinese defendants....<sup>2</sup>

This action by the United States was complete departure from that in 1922 when Hughes expressed the American policy re extraterritoriality. He had wanted the Commission to meet with the predetermined plan of using the findings of that body as further proof of the necessity for any action that the Powers might devise to protect foreign life and property in China. Accordingly, with this as a main purpose, the United States was willing to hasten the convention of the Extraterritoriality Commission.

When Kellogg became Secretary of State, a change in our policy, more responsive to Chinese Nationalist aims, was discernable. H. S. Quigley, writing in 1926, condemned

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1. Foreign Relations, 1927, II, p. 467.

2. Ibid., p. 469.



the Powers' treatment of the question of extraterritoriality. He felt that it was entitled to consideration on its own merits and should not be determined by considerations of a non-judicial character.<sup>1</sup> This was an expression of a growing opinion in America that demanded treaty revision along liberal lines.

The Commission admitted the weakness of the extraterritorial system. However, it concluded that this weakness was not so detrimental to the protection of foreign life and property as Chinese judicial control would be. Concerning the Nationalist demand for the abolition of extraterritoriality, China experienced defeat from the report of the Commission. However, tangible gain can be seen from the establishment of the trend toward gradual abolition of the privilege based on the recommendations made in the report. To illustrate the intention of the Powers to practice these recommendations, the United States immediately complied with the Chinese request that consular representatives be withdrawn from trials in Chinese Courts.

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1. H. S. Quigley, "Extraterritoriality in China," p. 68.

## CHAPTER IV.

### COMMUNICATIONS

Of all means of communications developments in China, the wireless concern will be the subject of this study. International competition in this field is representative of the administrative problem of communications between Treaty Powers and China.

In a memorandum distributed by the Chinese delegation to the Washington Conference, "The Chinese Government ask that the Conference take action that will lead to the immediate abolition or surrender to the Chinese Government of all electrical means of communications, including wireless stations, now maintained on Chinese soil without the consent of the Chinese Government."<sup>1</sup>

China claimed that she had adequate facilities for wireless communication and that it was unnecessary for foreign nations to maintain their own stations. There were approximately twenty foreign wireless stations in China that had been erected by the Powers without the consent of the Chinese Government.<sup>2</sup> The foreign operation of wireless was nothing but a political measure representing

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1. "Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong., 2d Sess. (Washington, 1922), p. 505.

2. Ibid., p. 506.



an infringement on China's administrative and territorial integrity.

When the Conference discussed the Chinese memorandum, two claims were considered; (1) that a distinction be drawn between official and commercial messages and (2) that the question of wave lengths be regulated by mutual agreement.<sup>1</sup> Hughes, as did other representatives, told the Conference that the United States maintained wireless stations only to the extent provided in the Boxer protocol of 1901, i.e. in connection with troop stations and to keep communications open to the sea.<sup>2</sup> The United States agreed with the Chinese Government that the legation stations should be used for official business only and not for commercial purposes. The importance of wireless communication lay in the fact that there were only a limited number of wave lengths available. The United States had added the discussion of wireless to the agenda in an effort to apply international co-operation to the problem. Because of the highly complicated technical aspect of wireless, the delegates agreed not to proceed with the subject of wave lengths beyond a practical point.<sup>3</sup>

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1. "Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong., 2d Sess. (Washington, 1922), p. 520.

2. Ibid., p. 517.

3. Ibid., p. 525.

The subject of wireless stations in China was then referred to a subcommittee which reported a general resolution of five parts. By unanimous agreement it was decided to apply the principle of the Open Door to the fourth part of this resolution.

- (4) Questions regarding radio stations in leased areas will be discussed by the Chinese Government and the Government concerned.<sup>1</sup>

Mr. Sze of the Chinese delegation declined the suggestion of a special commission to study wireless telegraphy.<sup>2</sup> In China, wire telegraphy was a government monopoly and for this reason China would rather regard it as purely internal policy. The Chinese delegate added that the Resolution adopted had been the policy of eight Powers and that China's policy was as follows:

The Chinese delegation takes this occasion formally to declare that the Chinese Government does not recognize or concede the right of any foreign power or of the nationals thereof to install or operate, without its express consent, radio stations in legation grounds, settlements, concessions, leased territories, railway areas or other similar areas.<sup>3</sup>

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1. "Conference on the Limitation of Armament," Senate Documents, vol. X, 67th Cong. 2d Sess. (Washington, 1922), p. 548.
  2. Ibid., p. 718.
  3. Ibid., p. 732.



The committee of communications experts then concluded with recommendations which American, British, French, and Japanese radio interests could follow but the Conference did not take decisive action regarding wireless communication.

- (1) British, French and Japanese co-operative scheme of private radio interests with the consent of China; no monopoly or exclusive privilege and subject to Chinese laws; complete station near Peking (Mitsui).
- (2) American expert plan for trans-Pacific service to be Chinese-American entity based on the Federal Telegraph Company concession.
- (3) Traffic arrangements to carry out provisions (1) and (2) to be at liberty of governments concerned.
- (4) Chinese Ministry of Communications to authorize foreign stations that handle ship to shore communications.
- (5) China National Wireless Telegraph Company to extend its scope for best development of resources in China; prevent monopoly and conflict in China.
- (6) Four powers recommend that arrangement be made with cable companies to continue same rates for a period after expiration of existing contracts in 1930.<sup>1</sup>

While the Conference was in session competition among international radio interests in China was progressing. The American State Department had made a commitment to an

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1. Foreign Relations, 1922, I, p. 840.

American wireless concern in 1921. That year, the Federal Telegraph Company, incorporated in California, had signed a contract with the Peking Government providing for the construction of a radio station in Shanghai with secondary stations at Canton, Harbin, and Peking for wireless overseas communication.

The American Legation had asked for Department support of the Federal contract because it felt that it might conflict with Marconi (British), Mitsui (Japanese), and other monopolistic cable agreements. The State Department, opposed to monopolies in China, had received assurances that the Federal contract was not monopolistic nor a hindrance to equal opportunity. Accordingly the Department gave its support. There was another reason for diplomatic support of the Federal contract. The American Government wanted control of direct communication between the United States and China and planned to use the Federal Company's concession to carry it out.

To help finance the Federal concession, the State Department persuaded the Radio Corporation of America to lend financial assistance.<sup>1</sup> The Radio Corporation had given support to a scheme for international control that had been

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1. Foreign Relations, 1922, I, p. 849.



advanced at the Conference but expressed willingness to meet the wishes of the State Department concerning trans-Pacific communications. The two companies proposed to set up a new company to execute the China contract of the Federal Company. Both the Federal Company and the Radio Corporation would have an equal share in the control of the new company. The Telegraph Company and the Radio Corporation both knew that the State Department would not determine the legality or commercial value of the project, but they wanted the assurance of diplomatic support. The State Department had passed on the Federal contract in 1921 and it now repeated a warning against the creation of a monopoly by the Radio Corporation in the ensuing transaction. The Navy Department, also, evidenced interest in the concern. It was anxious for the Federal Telegraph Company to retain its identity to assure the continuation of the manufacture and sale of certain apparatus.<sup>1</sup> Such precautionary measures would indicate that the American Government was opposed to the scheme for either a wireless combination or a private monopoly in China.

The American Minister and the Peking Ministry of Communications urged the State Department to make the

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1. Foreign Relations, 1922, I, p. 851.

Federal Company hasten in the execution of its contract because the British, French, and Japanese wireless interests had informed China in 1922 that they would soon present an agreement that they had reached on a wireless policy.<sup>1</sup> Meanwhile the Radio Corporation and the Federal Company were carrying on negotiations in strict secrecy because of the Radio Corporation's close affiliations with the international radio concerns.<sup>2</sup> However, in October the Japanese filed protest against the Federal contract on the basis of the monopolistic clause in their Mitsui contract which enabled them to establish and operate all overseas radio service in China to the exclusion of all other nationals interested in wireless communication.

This protest carried enough weight to cause the Peking Ministry of Communications to refuse to sanction the Federal Company's negotiations with the Radio Corporation on the grounds that: (1) a Parliamentary attack would probably result if public opinion decided that the Ministry had made a new contract; and (2) the Japanese objection.<sup>3</sup>

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1. Foreign Relations, 1922, I, p. 854.

2. Ibid., 1923, I, p. 855.

3. Ibid., 783.



China in the face of international pressure was reverting to a policy of delay. Schwerin, President of the Federal Company, told the State Department that within two months the land near Shanghai selected for the radio station would be flooded for the rice crop, and that he believed that the Chinese authorities were fully aware that work would then be impossible for the remainder of the year.<sup>1</sup>

Reacting to China's delay, the United States announced that it supported the Federal contract on the principle of the Open-Door because it concerned, "the interpretation to be given to the principle of equality of commercial and industrial opportunity in China,..."<sup>2</sup> However, the State Department had to face the additional complication of international interests in the Federal Company's contract.

The Powers who were trying to form the radio consortium for China first had to dispose of the Mitsui claim and the Federal contract. Hughes considered the advisability of entering an agreement among American, British, French, and Japanese radio interests on the basis of the experts' recommendations at the Washington Conference.<sup>3</sup>

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1. Foreign Relations, 1923, I, p. 785.

2. Ibid., p. 788.

3. Ibid., p. 797.

This plan reserved the Chinese-American field as an entity to be developed through the Federal Contract and thus trans-Pacific control by the United States would be insured. Hughes thought that our entrance in the consortium would facilitate the execution of Federal contract. When the British asked him if the United States would meet the Japanese objections to the recommendations of the experts, he replied that "while not unwilling that its nationals should co-operate by means of appropriate traffic agreements and other business arrangements with any international combination which might be established for the development of radio communications between China and other countries, it is not prepared to become a party to a combination for that purpose, desiring in particular to retain independence of action with respect to communications between the United States and China."<sup>1</sup> Thus he carefully indicated that our entrance, if at all, would be carefully qualified. China had not given its opinion on the consortium, and Hughes tried to enact a policy that seemingly agreed with the Chinese desires.

The Japanese Government had objected to the opinion of the American experts in regard to the execution

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1. Foreign Relations, 1923, I, pp. 823-824.



of the Federal contract. Japanese propaganda went into action to demand that the Chinese Government cancel the contract. The Japanese (Mitsui) station was in financial straits and had been anxious for the Federal Company to buy up its concession. Schwerin did not believe that his company could buy out the Mitsui and feared that if they tried to unite the two the Japanese would insist upon sharing the stations.<sup>1</sup> That arrangement would endanger American control of trans-Pacific communication. Failing in this respect, the Japanese presented a counter proposal that the principles of consortium be applied to the Mitsui and Federal contracts.<sup>2</sup> In this way, the contracts would be pooled and superceded by a loan agreement for wireless, comparable to the railway loans.

The Department felt that it might have to look to the Japanese proposal as the only alternative if the Radio Corporation and the Federal Company did not settle an internal dispute and complete their original scheme.<sup>3</sup> Disturbed conditions within the American interests caused

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1. Foreign Relations, 1924, I, p. 571. \*

2. Foreign Relations, 1925, I, p. 892.

3. Ibid., p. 897.

Hughes to further reconsider his attitude toward the consortium. Before such a course became imminent, however, the United States presented a plan for the mutual transmission of traffic between the Federal and Mitsui stations.<sup>1</sup> Japan called this traffic proposal a breach of China's administrative integrity and unfair treatment of the other Powers concerned. She held that it violated the Mitsui contract and indicated that the Federal Company would have exclusive control of all radio stations to be constructed by the company as well as control of radio service between the United States and China.

The Peking Government now took a defensive position by informing both the United States and Japan that they would have to adjust their differences before China could consider fulfillment of the Federal contract.<sup>2</sup> In such action Kellogg saw the repudiation of the contract and violation of the Open-Door principle. The Chinese Minister for Foreign Affairs denied that a question of principle was involved. He declared it was simply a practical matter of overcoming the Japanese objection. However, shortly after the Peking Government gave every

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1. Foreign Relations, 1925, I, p. 902.

2. Ibid., p. 913.



evidence of cancelling both the American and Japanese contracts. There was little consolation for the Federal Company to know that the Mitsui contract would also be cancelled. For by the terms of the Japanese contract, the Peking station would remain in Japanese hands because construction had been completed.<sup>1</sup> The cancellation was carried through at a secret cabinet meeting August 24, 1920.

The Peking Government immediately after cancellation proposed a joint American-Japanese loan to the Chinese Government to develop its wireless system. The American representatives felt that Japanese interest behind the proposal to draw the Americans from vested contract rights into negotiation in which they might be at a disadvantage.<sup>2</sup> The Chinese Government had not answered MacMurray's request for a statement on the contract, and until it was forthcoming the American Government refused to recognize the cancellation. The quick action of the American Minister saved the Federal contract.<sup>3</sup>

The Peking Minister told Kellogg that MacMurray had sent his government a communication that was interpreted

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1. Foreign Relations, 1925, I, p. 915.

2. Ibid., p. 919.

3. Ibid., p. 920.

as meaning that the action of the United States in the coming Special Conference would be governed by the attitude of the Chinese Government toward the Federal Wireless contract.<sup>1</sup> Kellogg agreed with MacMurray and expressed his Government's disappointment in China's disregarding the policy of the Open-Door. China, he pointed out, was failing to support the policy at the same time that she was appealing to the Powers to release her from conventional tariffs and extraterritorial treaties. Some opinion in Peking regarded our insistence on the Open-Door policy as mere bluff. The State Department, though determined to have the Federal contract recognized, did not want the particular problem to become a focus for our general policy in China.<sup>2</sup>

The Peking Government acceded to the desire of the United States but only as an emergency measure in the light of two evils. President Tuan assured MacMurray that the contract would be upheld.<sup>3</sup> Tuan expressed his Government's adherence to the principle of the Open-Door

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1. Foreign Relations, 1925, I, p. 922.

2. Ibid., p. 927.

3. Loc. cit.



but he recognized the potential threat of Japan in Manchuria and felt that he had to appease it.<sup>1</sup> He suggested a tripartite conversation to fulfill the Federal contract and to assure Japan that the Shanghai station would not interfere with the Japanese system of naval radio communications. The American Government informed Peking that it would enter discussion when the Federal contract was in course of performance.

The State Department was anxious to conclude this long standing controversy but held out for its original terms. Kellogg was impressed with the argument that the proposed radio consortium would alleviate financial disability in connection with wireless in China. MacMurray informed his chief that he thought the real point of Japanese opposition to the expert's recommendations was this, "they would prefer China to be served by a station under their control though it is inadequate for trans-Pacific work, rather than have an adequate station built near Shanghai by Americans or any other nationality."<sup>2</sup>

MacMurray in conversation with Saburi, Japanese delegate to the Tariff Conference, queried him as to why

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1. Loc. cit.

2. Foreign Relations, 1926, I, p. 1044.

his Government was vitally interested in a commercial enterprise.<sup>1</sup> He answered that there was some opinion in Japan that the American Navy's interest in the Federal contract was concerned with a view to future war with Japan. Upon denial of amour propre by the United States the Japanese delegate implied a willingness to reconsider the American proposal for a traffic arrangement between the American and Japanese stations.<sup>2</sup> Saburi declared that the question had formerly been studied from the political rather than from the economic point of view. Thus a point seemed to have been reached where accord might evolve and the consortium plan which had not been accepted by the Chinese could be discarded.

The Chinese Government had never replied to the Japanese consortium proposal.<sup>3</sup> A definite statement, then, might have directed the course of the dispute. Now dissatisfaction was seen on all sides. J. C. Harbord of the Radio Corporation appealed to Kellogg.

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1. Foreign Relations, 1926, I, p. 1044.

2. Ibid., p. 1045.

3. Ibid., p. 1051.



....It is unnecessary, possibly ungrateful, to reiterate our hope that the State Department will push this matter to a conclusion at a very early date. Our loyalty to its position on the "Open-Door" has cost us already half a million dollars in money paid out which sum is increasing by a little less than \$9,000 each month. We are quite convinced that a consortium for wireless communication in China would be very much better for China than no wireless communication at all. We very much appreciate the earnest support which our Federal project has in the past had from the State Department and respectfully urge that there be no relaxation in such support. We do feel, however, that the moment that the State Department becomes convinced that there is no likelihood of the Chinese going forward with our contract, no political objection to a consortium should be allowed to stand in the way of our making arrangements as have been open to us for a long time.<sup>1</sup>

Upon the advice of MacMurray, the American Government proceeded with caution in requesting China for a reply concerning the Federal contract.<sup>2</sup> He stressed the Open-Door policy in toto. For the Chinese Government, in its present Nationalistic frame of mind, would never grant another contract as favorable as the Federal contract.<sup>3</sup> Peking, however, did not respond.

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1. Foreign Relations, 1926, I, p. 1052.

2. Ibid., p. 1063.

3. Loc. cit.

The British Government viewed the Federal contract as a monopoly of the same type as the Mitsui. They specifically objected to China's pledging the whole of the surplus revenues of the Chinese Railways as security for the loan contract.<sup>1</sup> The general tenor of the British protest was that the individual action of the United States was contravenous to its declared policy in 1918 concerning consortium investment in China. The British memorandum quoted a note from the United States sent to the British, French, and Japanese October 8, 1918.

The proposal of the United States contemplated that industrial, as well as administrative loans should be included in the new arrangement for the reason that, in practise, the line of demarcation between various classes of loans often is not easy to draw. Both alike are essential fields for legitimate financial enterprise and both alike should be removed from the sphere of unsound speculation and of destructive competition. The intention of this Government was to suggest as a means to that end, that the interested Governments should, by common consent, endeavor so to broaden the membership in the newly formed national groups that all financial firms of good standing interested in such loans might be included in the respective groups and should withhold their support from independent financial operations without previous agreement of the interested Governments.<sup>2</sup>

Our support of the Federal contract and refusal to sanction the consortium of radio interests denied this note.

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1. Foreign Relations, 1926, I, p. 1070.

2. Ibid., p. 1071.



The Peking Government inferred to MacMurray that it might honor the Federal contract in exchange for an early recognition of its regime.<sup>1</sup> MacMurray refused this offer, possibly because it might interfere with his negotiations with the Canton regime concerning a tariff treaty. He felt that the Peking refusal to acquiesce on the grounds of the Open-Door principle meant a complete denial of the Federal contract and thus urged his Department to negotiate with Sun Ch'uan-fang who controlled Shanghai.<sup>2</sup> Kellogg refused this suggestion because he felt that ultimate fulfillment of the radio contract would need the support of the Central Government at Peking.<sup>3</sup> In regard to policy for private enterprise, Kellogg did not follow MacMurray's opinions as willingly as he did for tariff and extraterritoriality policies.

Shortly after, the Department replied to the Japanese invitation to enter the consortium. The United States maintained its original stand against the consortium and for the traffic arrangement between the Federal and

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1. Foreign Relations, 1926, I, pp. 1077-1078.

2. Ibid., p. 1078.

3. Ibid., p. 1077.

Mitsui stations. Our note proposed a conference of Chinese, Japanese, and American radio representatives to meet in New York to arrange a solution of the present difficulties.<sup>1</sup> However, the United States did not consider that the proposed conference would be an excuse for further delay by Peking in executing the Federal contract.

The Japanese delayed answering the American request for the radio conference and this delay caused the Chinese to withhold acceptance and the Radio Corporation to consider withdrawing its support of the Federal Company.<sup>2</sup> The United States tried to convince Japan that, "it ought to be possible for governments to allow the private corporations who were going to be connected with the operation of radio between China and Japan and the United States to get to-gether as private individuals for the purpose of finding some plan of operation and of agreeing among themselves on how they could carry out their proposals,...."<sup>3</sup> When the private interests had agreed upon a plan it would then be time for the Governments concerned to consider whether or not they would approve of

1. Foreign Relations, 1926, I, 1082.

2. Foreign Relations, 1927, II, p. 472.

3. Ibid., p. 477.



the plan agreed upon.

Japan presented a memorandum of their opinion as the solution of the wireless problem, November 1927, which proposed cancellation of both Mitsui and Federal contracts.

- (1) Japan and the United States voluntarily cancel Mitsui and Federal contracts.
- (2) China establish her own station at Shanghai--Federal Telegraph Company supply material.
- (3) China make loan contracts to Japanese and American companies.
- (4) China guarantee not to grant any foreign country or its nationals, exclusive right of operation of wireless telegraphy in China.
- (5) Tri-Government Conference to make detailed arrangements on first four proposals.<sup>1</sup>

The American Government did not sanction the Japanese proposal but offered to let the American radio interests decide its value for themselves.<sup>2</sup> The State Department merely stipulated that the right of controlling direct communication between the United States and China and the denial of a radio monopoly should be maintained. The Department expected the American interests to uphold these stipulations at the proposed tri-partite conference

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1. Foreign Relations, 1927, II, p. 472.

2. Ibid., p. 479.

when it convened. However, letting the American interests accept or reject the Japanese proposal which specifically denied the Federal contract constituted tacit diplomatic withdrawal of the support of the Federal Telegraph Company.

In the development of international competition to secure wireless contracts in China during this period the main issues at stake were never clearly defined. The American State Department had given support to the Federal Telegraph Company in 1921 before wireless telegraphy was discussed at the Washington Conference. W. W. Willoughby maintained that nothing much was done in regard to wireless communication in 1922.<sup>1</sup> In this study, the recommendations that the experts presented at Washington are basic aspects of the wireless controversy. The State Department expressed willingness to enter the radio consortium on the basis of these recommendations but Japanese objections defeated any intentions it might have had toward entering the consortium.

After the Washington Conference the United States had to face the conflict between continuing the support of the Federal concession and of opposing the radio consortium because the Peking Government did not give its approval.

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1. W. W. Willoughby, China at the Conference (Baltimore, 1922), p. 157.



The conflict was heightened by trouble within the American radio interests. The Federal Company, backed by the State Department, was unable to work in accord with the Radio Corporation which had decided leanings toward the international radio consortium.

Anxious to end the long controversy, the State Department adopted the policy of allowing private radio interests in Japan, the United States, and China to negotiate with the Chinese Government. The constructive work of the Department in regard to the wireless controversy was the fact that the American Government supported its national's contract until 1927 when the chances that China would soon have a stable government were practically certain. Withdrawal of diplomatic support of the Federal contract was virtual recognition of China's autonomous right to wireless control.

State Department action during the wireless controversy was in keeping with American foreign policy of the era. "Dollar Diplomacy" was in the process of being terminated in Latin America. Mexico and Nicaragua experienced internal stability from effective moral support by the United States. The American public was becoming anti-imperialistic and demanded that its government treat all nations as equals.

## C H A P T E R V.

## CONCLUSION

Since 1842 China had had only nominal control of many of her administrative functions. Actually foreign governments and their nationals had maintained control by treaty rights and private contracts. Though the foreign control of the tariff, courts, and communications differs in degree, a semblance of similarity is discernable in a study of the problems from 1922-1928.

All three problems were discussed at the Washington Conference, though in the light of China's requests little specific action was taken in 1922. Provisions was made for special conferences to consider the questions of China's tariff and judicial system. A technical group presented recommendations for consideration among international wireless interests in China.

China took the initiative at the Conference in presenting her ten points for procedure. Defeated when the Powers adopted the Root Resolutions as blanket policy, China persistently made clear to the representatives just what her ambitions and desires were in regard to these administrative problems. The Chinese delegation asked for tariff autonomy, wireless control, and immediate action



toward the eventual relinquishment of extraterritoriality.

It is interesting to note the divergent view of the meaning of administrative and territorial integrity. China declared at Washington that the problems in this study constituted administrative integrity. The Powers agreed to uphold that integrity but did not take measures to guarantee it other than announcing integrity in principle.

China gradually became strong enough to persuade the United States to grant tariff autonomy in 1928. And although she failed to gain complete control of her courts and communications, she had established a precedent which should, it would seem, ultimately lead her to this control.

In gaining tariff autonomy, China was aided by the American Minister J. V. A. MacMurray who has not received the credit and recognition due him for the part he played in American diplomacy at this time. However, from the State Department correspondence it is evident that MacMurray guided the entire course of diplomacy which prevented the United States from recognizing a Chinese Government controlled by militarism or one influenced by Communism.

The evidence would suggest that China would not have gained tariff autonomy in 1928 if it had not been for

the Chinese Nationalist Movement. The Nationalist's note to MacMurray condemning the ill-conceived American policy, carried more diplomatic weight for the success of tariff autonomy than the Peking regime's threat to abrogate all customs treaties at the Special Tariff Conference.

A thought might be well advanced that China would not have gained tariff autonomy if there had been no civil war caused by the Nationalist agitation. The Southern faction continuously planned a return to the power it had given up in 1912 and stimulated civil war throughout the post-Revolutionary period to attain it.<sup>1</sup> The Nationalist military victory contributed to the recognition of Nanking by the United States. For it seems certain from this study that MacMurray would have awaited developments much longer if necessary and that he would never grant tariff autonomy to a Peking Government representing China but influenced by Japan and weakened by military anarchy.

Of the three demands made by China concerning administration, tariff autonomy was the only one granted in 1928 because it was used as the reward for the establishment of the Nanking Government. In the civil strife between

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1. H. B. Morse and H. F. MacNair, Far Eastern International Relations (Cambridge, 1931), p. 670.



the North and South, both sides wanted tariff autonomy and the resulting increase in revenue much more than control of courts and communications.

The policy of international co-operation among Powers in China was never strictly maintained. The United States made efforts to abide by it in principle and practise until 1925. Treaty revision with China alone was contemplated after that because of the dissention among the Powers. However, in 1927 the United States was willing to depart from the co-operative scheme for a new reason. Kellogg feared that an identic note to apply sanctions against the Nationalists for the Nanking outrage would be detrimental to the strength of the moderate element in the Party. It was this moderate Nationalist faction with whom the American Government wanted to negotiate a customs treaty of equality and reciprocity. When this plan was acted upon in 1928 the co-operative policy immediately became obsolete.

Professor Toynbee declared that the Nine Power Treaty of the Washington Conference became obsolete when Kellogg failed to mention it in his statement of January 27, 1927.<sup>1</sup> Nor did the United States inform the other

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1. C. P. Howland, Survey of American Foreign Relations (New Haven, 1930), p. 142.

Washington Conference members of its intention to grant tariff autonomy to China until the day before the treaty was signed.<sup>1</sup>

There is a general theory that a line of continuity exists in the American Far Eastern Policy. It is an expression of idealism built upon the expectation of commercial expansion. The interest of the State Department followed American enterprise in China. However, largely from the progressive diplomacy of American statesmen, the policy of helping China establish a strong efficient government became a separate entity.

John Marshall, American Minister in 1853, stated the ideal thusly:

It is my opinion that the highest interest of the United States are involved in sustaining China--maintaining order here, and gradually engrafting on this worn out stock the healthy principles which give life and health to governments rather than to see China become the theater of widespread anarchy and ultimately the prey of European ambition.<sup>2</sup>

John Hay, imbued with the idea of commercial enterprise in China, announced the Open-Door policy and

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1. C. P. Howland, Survey of American Foreign Relations, p. 142.
  2. H. B. Morse, and H. F. MacNair, Far Eastern International Relations, p. 174.



brought forth the moral obligation first stated by John Marshall, of preserving the territorial and administrative integrity of China. Wilsonian idealism found expression in China when the American banking group withdrew from the Six Power Consortium and again at Paris when America tried to uphold China's Shantung claim at the Peace Conference. Kellogg's moral influence doctrine picked up the thread of idealism. Recognition of the Nanking Government by the United States was a source of strength enabling China to assume a position of equality among nations of the world.

The Japanese diplomacy of this period presents thought for contemplation. The Japanese were quite obviously using obstructionist tactics at the Tariff Conference in the matter of implementing the proposed Washington surtaxes. Again, the Federal Telegraph Company's contract failed to go into effect largely because of Japanese influence at Peking and in the international radio concern. The results of this study would seem to indicate that the United States felt that Japanese influence in Northern China was as detrimental to the establishment of a representative Chinese Government as the Communistic control in the South.

In evaluating evidence, it could be assumed that the United States neutralized the Japanese successful influence over Chinese administration by supporting the Nanking Government which was violently anti-Japanese. The ultimate result of foreign control in China has not been decided as yet. The problems treated here were merely part of a movement that exists to-day. In brief it is the struggle to establish territorial and administrative sovereignty in China.



## A P P E N D I X I.

## CHRONOLOGY OF THE CHINESE REVOLUTION \*

October 30, 1911	Formal Beginning.
January 1, 1912	Inauguration of Sun Yat-sen as Provisional President of China at Nanking.
February 12, 1912	Abdication of Manchus and Succession of Yuan Shi-K'ai at Peking.
1912 - 1916	Presidency of Yuan Shih-k'ai at Peking.
1916 - 1917	Presidency of Li Yuan-hung at Peking.
1917 - 1918	Presidency of Feng Kuo-chang at Peking
1918 - 1922	Presidency of Hu Shih-chang at Peking.
1922 - 1923	Second Presidency of Ki Yuan-hung at Peking.
1923 - 1924	Presidency of Tao Kun at Peking.
1924 - 1926	Provisional Government of Taun Chi-jui at Peking.
1926 - 1928	Dictatorship of Chang Tso-lin at Peking.

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\*From: A. N. Holcombe, The Chinese Revolution (Cambridge, 1931), p. 390.

1917 - 1925	Independent Revolutionary Government of Sun Yat-Sen at Canton.
1925 - 1926	Nationalist Government at Canton.
1926 - 1927	Nationalist Government at Hankow.
1927 - 1928	Nationalist Government at Nanking.
1928 -	Presidency of Chiang K'ai-shek at Nanking.



## A P P E N D I X II.

RECOMMENDATION OF THE REPORT OF THE COMMISSION ON  
EXTRATERRITORIALITY\*

## I.

The administration of justice with respect to the civilian population in China must be entrusted to a judiciary which shall be effectively protected against any unwarranted interference by the executive or other branches of the Government, whether civil or military.

## II.

The Chinese Government should adopt the following program for the improvement of the existing legal, judicial and prison systems of China:

1. It should consider Parts II and III of this report relating to the laws and to the judicial, police, and prison systems, with a view to making such amendments and taking such action as may be necessary to meet the observations they made.
2. It should complete and put into force the following laws:
  - (1) Civil code.

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\*"Report of the Commission on Extraterritoriality in China, Peking September 16, 1926", United States Department of State (Washington, 1926)

- (2) Commercial code (including negotiable instruments laws, maritime law and insurance law).
  - (3) Revised criminal code.
  - (4) Banking law.
  - (5) Bankruptcy law.
  - (6) Patent law.
  - (7) Land expropriation law.
  - (8) Law concerning notaries public.
3. It should establish and maintain a uniform system for the regular enactment, promulgation and recission of laws, so that there may be no uncertainty as to the laws of China.
4. It should extend the system of modern courts, modern prisons and modern detention-houses with a view to the elimination of the magistrates' courts and of the old-style prisons and detention-houses.
5. It should make adequate financial provision for the maintenance of courts, detention houses and prisons and their personnel.

### III.

It is suggested that, prior to the reasonable compliance with all the recommendations above



mentioned but after the principal items thereof have been carried out, the powers concerned, if so desired by the Chinese Government, might consider the abolition of extraterritoriality according to such progressive scheme (whether geographical, partial, or otherwise) as may be agreed upon.

#### IV.

Pending the abolition of extraterritoriality, the Governments of the powers concerned should consider Part I of this report with a view to meeting the observations they made, and with the cooperation of the Chinese Government wherever necessary, should make certain modifications in the existing systems and practise of extraterritoriality as follows:

##### 1. Application of Chinese Laws

The powers concerned should administer, so far as practicable, in their extraterritorial or consular courts such laws and regulations of China as they may deem it proper to adopt.

## 2. Mixed Cases and Mixed Courts

As a general rule mixed cases between nationals of the powers concerned as plaintiffs and persons under Chinese jurisdiction as defendants should be tried before the modern Chinese courts (Shen P'an T'ing) without the presence of a foreign assessor to watch the proceedings or otherwise participate. With regard to the existing special mixed courts, their organization and procedure should, as far as the special conditions in the settlements and concessions warrant, be brought more into accord with the organization and procedure of the modern Chinese judicial system. Lawyers who are nationals of extraterritorial powers and who are qualified to appear before the extraterritorial or consular courts should be permitted, subject to the laws and regulations governing Chinese lawyers, to represent clients, foreign or Chinese, in all mixed cases. No examination should be required as a qualification for practice in such cases.

## 3. Nationals of Extraterritorial Powers

- (a) The extraterritorial powers should correct certain abuses which have arisen through the extension of foreign protection to Chinese as well as to business and shipping interests the actual ownership of which is wholly or mainly Chinese.



- (b) The extraterritorial powers which do not now require compulsory periodical registration of their nationals in China should make provision for such registration at definite intervals.

#### 4. Judicial Assistance

Necessary arrangements should be made in regard to judicial assistance (including commissions rogatoires) between the Chinese authorities and the authorities of the extraterritorial powers and between the authorities of the extraterritorial powers themselves, e.g.:

- (a) All agreements between foreigners and persons under Chinese jurisdiction which provide for the settlement of civil matters by arbitration should be recognized, and the awards made in pursuance thereof should be enforced, by the extraterritorial or consular courts in the case of persons under their jurisdiction, except when in the opinion of the competent court, the decision is contrary to public order or good morals.
- (b) Satisfactory arrangements should be made between the Chinese Government and the powers concerned

for the prompt execution of judgments, summonses and warrants of arrest or search, concerning persons under Chinese jurisdiction, duly issued by the Chinese courts and certified by the competent Chinese authorities and vice versa.

5. Taxation

Pending the abolition of extraterritoriality, the nationals of the powers concerned should be required to pay such taxes as may be prescribed in laws regulations duly promulgated by the competent authorities of the Chinese Government and recognized by the powers concerned as applicable to their nationals.



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May 19, 1943





